Maps.

64/2

SUPREME COURT OF THE UNITED STATES.

No. ~~281.~~ 206.92

THE UNITED STATES, APP'TS,

vs.

CHARLES D. SEMPLE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 281.

THE UNITED STATES, APP'TS,

vs.

CHARLES D. SEMPLE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

"Colus."

INDEX.

	Original.	Print.
Title page	1	1
Index to proceedings before board of commissioners	3	1
Petition	4	2
Deposition of John Bidwell	7	2
Espediente	10	3
Map	10	4
Diseño attached to espediente "C." translation of espediente	18	6
Exhibit, N. H. Hall, annexed to deposition of John Bidwell	27	10
Translation of exhibit, N. H. Hall, annexed to deposition of J. Bidwell	30	11
Exhibit, N. H. Hall, annexed to deposition of J. Bidwell	32	12
Translation of exhibit, N. H. Hall, annexed to deposition of J. Bidwell	33	12
Transfer John Bidwell to Charles D. Semple	35	12
Opinion by Alpheus Felch	38	14
Decree	42	15
Secretary's certificate	43	15
Notice of appeal	45	16
Notice of appeal	46	16
Order permitting evidence to be taken	48	17
Appeal notice by attorney general	49	17
Deposition of John Bidwell	50	18
" L. B. Mizner	55	19
" O. M. Wozencraft	57	20
Petition	59	21
Answer	62	22
Opinion confirming claim	63	22

	Original.	Print.
Decree of confirmation	70	25
Order granting appeal	73	25
Decree to file mandate U. S. Supreme Court	74	26
Supreme Court mandate	75	26
Order to return survey	77	27
Exhibits "A" and "B," (plats)	78	28
Statement accompanying plat	79	28
Claimant's exceptions to survey	81	29
Order allowing further time to take testimony	84	30
Deposition of J. F. Gilmer, for claimant	86	31
" Casimir Bielawski "	88	32
" Stephen Cooper "	92	33
" S. R. Smith "	97	35
Exhibit No. 1, annexed to deposition of S. R. Smith	106	38
Opinion rejecting survey approved by surveyor general	107	38
Order rejecting survey and directing resurvey	114	40
Affidavit of L. B. Mizner for return of survey	116	41
Order to return survey	117	41
Two plats from surveyor general	118	42
Order denying motion to vacate order of December 29, 1859, etc., etc	119	43
Notice of motion to confirm survey	120	44
Opinion on survey	122	45
Order denying motion to approve survey and directing issuing of monition	132	48
Monition	133	48
Order on return of monition	135	49
Exceptions of United States to survey	137	50
Order to close proofs, &c	139	51
Decree confirming survey	140	51
Plat of survey	140	52
Order granting appeal in behalf of United States	144	54
Clerk's certificate	146	54

CHARLES D. SAMPLE, *claimant*,
vs.
THE UNITED STATES, *defendant*.
} For the place named "Colus."

2

3 *Index to proceedings before board of com'rs.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this —— ——, anno Domini one thousand eight hundred and fifty, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Chas. D. Sample, for the place named "Colus," was presented, and ordered to be filed and docketed with No. 144, and is as follows, to wit.

(*Vide* page — of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *April 8th*, 1852.

In case No. 144, Charles D. Sample, the deposition of John Bidwell, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

4 (*Vide* page — of this transcript.)

SAN FRANCISCO, *Aug. 5th*, 1853.

On motion of the United States associate law agent, case No. 144 was ordered to be placed on the trial decree.

SAN FRANCISCO, *Aug. 8th*, 1853.

Case No. 144, Charles D. Semple, for the place named "Colus," called; submitted on briefs on both sides.

SAN FRANCISCO, *Oct. 25th*, 1853.

In case No. 144, Charles D. Sample, for the place named "Colus," Commissioner Alpheus Felch delivered the opinion of the board, rejecting the claim.

(*Vide* page — of this transcript.)

Petition.

To the honorable the commissioners to ascertain and settle the private land claims in the State of California:

Your petitioner, Charles D. Sample, respectfully represents that on the twenty-eighth day of June, in the year one thousand eight
5 hundred and forty-five, John Bidwell, a naturalized citizen of Mexico, and resident in the Territory of Alta California, petitioned Pio Pico, the governor of said Territory, for a grant of a certain parcel of land of the name of Colus, in the valley of the Sacramento river, consisting of two sitios or leagues of land; that the said governor, Pio Pico, under date of the fourth day of October, of the year one thousand eight hundred and forty-five, granted the said land in conformity with the said petition; that the honorable departmental assembly duly confirmed the said grant on the eight day of October of the same year. All of which will more fully and at large appear by an official copy of the various documentary papers and evidence of title in relation thereto, now on file in the office of Samuel D. King, esq., United States surveyor general for the State of California, are herewith exhibited and marked B, together with the translation of the same, marked C.

Your petitioner states that the said John Bidwell, by deed bearing date the twenty-sixth day of January, in the year one thousand
6 eight hundred and fifty, herewith exhibited, marked E, sold and conveyed the said grant of land, for valuable consideration, to your petitioner.

That the Mexican law, under which the said grant was made as aforesaid to the said Bidwell, has been fully complied with; that the said Bidwell held the said land from the aforesaid grant thereof, by the said Pio Pico, to the date of the said transfer to your petitioner, when the petitioner took possession thereof, and now holds the same under and by virtue of the said conveyance to him.

And your petitioner, therefore, prays that the said title may be confirmed.

C. D. SEMPLE.
SMITH and WHELAN.
Atty's for Claim't.

Filed in office March 31st, 1852.

GEO. FISHER. *Sec'y.*

7 *Dep. of John Bidwell.*

SAN FRANCISCO, *April* 5, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in the State of California, came John Bidwell, a witness produced in behalf of the claimant, in the case of Charles D. Semple, being number 144 on the docket of the commissioners, and was duly sworn.

The law agent was duly notified, and attended by Mr. Greenhow.

In answer to questions put by counsel for the claimant, the witness testified as follows, viz:

My name is John Bidwell; my age is thirty-two years. I have lived in California since the month of November, A. D. 1841, and now reside at Chico, in Butte county. I know the tract of land called Colus; it is situate on the west bank of the Sacramento river, about ten or fifteen miles above what are called Sutter's buttes; it was granted to me by Governor Pio Pico, in October, 1845, and the grant approved a few days after by the departmental assembly of California.

8 The grant contains two square leagues of land, as shown in the title-papers. When I received the grant in October, 1845, I intended to occupy the land the following summer, but was prevented from doing so by the hostilities which began in 1846, between the Mexicans and Americans. I served in the army during the war with Mexico. In June, 1849, after the war, I built a corral on the lands for corralling my cattle; in January, 1850, I conveyed the land to Charles D. Semple, the present claimant, who immediately took possession and still occupies it. The map which accompanied my title included a larger tract than two leagues, and as I could not obtain a juridical survey on account of the war, and as the dividing line between my grant and that made to Manuel Jimeno was not well defined in the map, I spoke to Thomas O. Larkin, the then owner of the Jimeno grant, and we had a verbal understanding that I should go and occupy the land according to my papers, and locate it

9 next to the lands granted to his children. The rancheria of the Colus Indians was within the limits of the grant made to me.

Paper marked N, H. Hall, purporting to be the original title-paper from Gov. Pio Pico to the witness, being shown him, he says it is such original paper, which was delivered to him a few weeks after its date. Paper marked M, H. Hall, being shown him, he says it is an original paper which was delivered to him showing the confirmation of his title by the departmental assembly; that he, the witness, received both papers at the same time, and that both are genuine. The witness further says that he is acquainted with the handwriting of Pio Pico and José Ma. Covarrubias, and knows their signatures to each of said papers to be genuine.

J. BIDWELL.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office April 8th, 1852.

GEO. FISHER, *Sec'y.*

10 *Espediente.*

1 S. D. K.—1845.

Espediente promovido por Dn. Juan Bidwell, en pretencion del terreno de la Orilla del Sacramento.

473.

Exmo Sor. Gobernador:

Juan Bidwell, Mejicano por naturalizacion y residente en este pais, desde el año 1811, ante V. E. con el mas profundo respeto se pre-

senta y espone: Que hallandose enteram'te resuelto á dedicarse á la agricultura y habiendo adquirido algunos bienes considerables de campo, suplica á V. E. tenga la bondad de concederle el terreno conocido con el nombre de Olus a Orilla del Rio Sacramento, cuyo parage es valdio, consta de dos sitios y con sus linderos; al N. O. tierra valdio; al N. E. el Rio Sacramento al S. y S. O. tierras valdios como manifiesta el diseño que debidamente acompaña.

P. T. á V. E. suplica se digne acceder á esta mi peticion por lo que recibire merced y gracia. Jura lo necesario, &c.

Nueva Helvetia á 28 de Junio de 1845.

JUAN BIDWELL.

(Here follows diseño—map, page 10.)

11 *Sor. alcalde de la* 1a. *nom'on., de Sonoma:*

Juan Bidwell, Mejicano por naturalizacion, á V. suplico se sirva informas si el terreno que manifiesta el adjunto diseño es Valdio; y todo lo demas que V. esca necesario; que deseando el solicitante ocupar d'ho terreno lo mas pronto posible y siendo preciso el informe de V. como juez de la jurisdiccion á que pertenece para obras la demora que sufrira sus instancias por la grande distancia de la capital si tuviese que regresar de ella para obtener d'ho informe suplica á V. tenga la bondad de informas sobre d'ho terreno para poder la llevar de sus deseos.

JUZGADO 1o DE SONOMA.

El terreno qe. solicita el interesado, este juzgado no le savra sies valdio ó no pr. el distancia de qe. esta de ese lugar pro el consequente, servise á pedir el informe del juzgado de Nueva Helvecias se este valdio ó no.

JACOB P. LEESE.

SONOMA, *Junio* 16, 1846.

P. T. á V. ruega se digne admitir le esta su humilde peticion y otorgar le la merced que impetra.

12 Sonoma, á 16 de Junio de 1845.

JUAN BIDWELL.

El terreno que solicita en su pedimento el ciudadano Don Juan Bidwell y que es representado en el diseño—esta des ocupado y doy esta certificacion para los fines que convengan.

Nueva Helvetia, Junio 20 de 1845.

J. A. SUTTER.

ANGELES, *Octubre* 2 *de* 1845.

Vista la solicitud con que da principio este esped'te y el informe de Dn. Juan Agusto Sutter con todo lo demas que se tuvo presente y ver convino de conformidad con la ley de 18 de Agosto de 1824 a reglamento de 21 de Noviembre de 1828 declaro al Sor. Dn. Juan Bidwell dueño en propiedad del parage de Colus en la Orilla del Sacramento y en estencion de dos sitios de ganado mayor, estandose el despacho correspondiente tomese razon en el libro respectivo y dirijase este enpediente á lo ex'ma asamblea departamental para su aprobacion.

13 Pio Pico, gobernador interino del departamento de las Californias asi lo mando decreto y firmo. Doy feé.

PIO PICO.

Pio Pico, gobernador interino del departamento de las Californias:

Por cuanto Dn. Juan Bidwell, ha pretendido para su beneficio personal el terreno conocido con el nombre de Colus en la Orilla del Rio Sacramento al rumbo N. E. practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades ql. me son conferidas á nombre de la nacion Mejicana he venido en concederle el espresado terreno declarandole la propiedad de el por las presentes letras entendiendose dicha concesion de entera conformidad con las leyes de reserva de la aprovacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1a. Podrá cercarlo sin perjudicar los caminos y servidumbres, lo disfrutará libre y esclusivamente destinandolo al uso ó cultivo
14 que mas le acomode.

2a. Solicitara del juez respectivo le de la posesion juridica en virtud de este despacho por el cual se demarcarán los linderos con las mojoneras necesarios.

3a. El terreno de que se le hace donacion es de dos sitios de ganado mayor segun espresa el diseño que obra en el esped'te. El juez que diese la posecion lo hara medir conforme á ordenanza que dando el sobrante ql. resulta á la nacion para los usos que le convengan.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en la ciudad de Los Angeles á 4 de Octubre de mil ochocientos cuarenta y cinco.

Queda tomada razon de este titulo en el libro a que corresponde.

ANGELES, *Octubre de* 1845.

Dado cuenta en sesion de hoy con este esped'te á la E. A. departamental se mando pasar á la comision de terrenos valdios.

15 PIO PICO, *Pres'd'te.*
AUGUSTIN OLVERA, *S'rio.*

Exmo. Sor.: La comision de terrenos valdios impuesta de este esped'te promovido pr. el ciud'no Mejicano pr. naturalizacion Dn. Juan Bidwell, en solicitud del parage llamado Colus en el Rio del Sacramento y ql. le ha sido adjudicado en propiedad pr. el gob' departam.: en titulo de 4 del corriente mes: en estencion de dos sitios de ganado mayor sugeta á la deliberacion de V. E. las proposiciones siguientes:

1a. Se aprueba la concesion hecha en propiedad pr. el supr. gobo. departam. en titulo librado f'ha 4 de este p. mes á fabor de Dn. Juan Bidwell del parage llamado Colus en el Rio del Sacramento y estencion de dos sitios de ganado mayor de entera conformidad con la ley de 18 de Agosto de 1824 y el reglamento de 21 de N'bre de 1828.

2a. El agraciado cuidará de cumplir con lo prevenido en el avto. 12 del citado reglamento de 1828 pa. poder disponer libremente
16 de este propiedad.

Sala de comisiones, Angeles, Octubre 8 de 1845.

FRAN'CO DE LA GUERRA.
NARCISCO BOTELLA.

ANGELES, *Octubre* 8 *de* 1845.

En sesion de hoy se aprobo por la ex'ma asamblea departamental con las dos proposiciones el dictamen precedente mandado se le devuelva el espediente respectivo. Al exemo Sr. Gobernador para los fines convenientes.

PIO PICO, *Presid'te.*
AUGUSTIN OLVERA, *S'rio.*

En la fecha se libro á la parte la copia respectivo.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, do hereby certify that the eleven preceding and hereunto annexed pages of tracing paper, numbered from one to eleven, inclusive, and each of which is verified by my initials, (S D. K.,) exhibit true and accurate copies of certain documents now on file and forming part of the said archives in my office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at [SEAL.] the city of San Francisco, Cal., this twentieth of February, A. D. 1852.

SAM'L D. KING,
Surveyor Gen'l, Cal.

Filed in office March 31st, 1852.

GEO. FISHER, *Sec'y.*

18 "C."

Translation of espediente.

Translation of the espediente of the grant of the rancho of Colus to J'n Bidwell, translated by Robert Greenhow; translation, 1845—espediente relative to the petition of Juan Bidwell for the tract of land called Colus, on the banks of the Sacramento.

473.

To the most excellent governor:

Juan Bidwell, a Mexican by naturalization, and residing in this country since the year 1841, appears before y. exc'y with the most profound respect, and declares that, having firmly resolved to devote himself to griculture, and having acquired some considerable property in cattle, he prays y. e. to have the kindness to grant to him the tract of land known by the name of Colus, on the bank of the river Sacramento, which tract is vacant and contains two sitios, bounded thus: On the northwest by vacant land; on the northeast by the

Sacramento; on the south and southwest by vacant land, as
19 shown by the drawing annexed to this petition. He begs your exc'l'y to deign accede, by which he shall receive mercy and favor. He swears to all that is required, &c.

New Helvetia, June 28, 1845.

(Signed) JUAN BIDWELL.

To the alcálde of the first nomination of Sonoma:

OFFICE OF THE FIRST JUSTICE OF SONOMA.

As to the tract of land which the petitioner requests, this court cannot say whether it is vacant or not, on account of its great distance from this place. You will, therefore, please to apply to the court of New Helvetia for a report as to whether it is vacant or not.

Sonoma, June 15, 1845.

JACOB P. LEESE.

Juan Bidwell, a Mexican by naturalization, prays you to be pleased to inform him whether the tract of land to which the accompanying map relates is vacant, and that you will state anything else respecting it which may be necessary. The petition, being desirous to occupy this land as soon as possible, and your report as judge of the jurisdiction to which it belongs being necessary, in order to prevent the delay to which his petition will be subjected in con-
20 sequence of the great distance of the capital, in case he should be obliged to return hither in order to obtain the report, he prays you to have the kindness to give the necessary information, that he may carry his desires into fulfillment. Therefore, he prays you to admit this his humble petition, and to grant the favor which he asks.

Sonoma, June 16, 1845.

JUAN BIDWELL.

The tract of land which citizen Juan Bidwell solicits in his petition, as represented on the map, is unoccupied, and I give this certificate for the purposes for which it may be useful.

New Helvetia, June 20, 1845.

(Signed) J. A. SUTTER.

ANGELES, *October* 2, 1845.

Having examined the petition at the beginning of this espediente, and the report of D. Juan Agusto Sutter, together with all the other circumstances of the case, in conformity with the law of August
21 18, 1824, and the regulations of November 21, 1828, I declare Don Juan Bidwell the proprietor of the tract of Colus, on the bank of the Sacramento river, of the extent of two sitios de ganado mayor. Let the proper title be drawn up, an entry be made on the proper book, and this espediente be addressed to the most excellent departmental assembly for its approval.

Pio Pico, governor *ad interim* of the department of the Californias, thus did order, decree, and sign, which I certify.

(Signed) PIO PICO.

Pio Pico, governor *ad interim* of the department of the Californias:

Whereas Juan Bidwell has requested for his personal advantage the tract of land known by the name of Colus,* on the bank
22 of the river Sacramento, on the northeast, having previously taken the measures and made the inquiries necessary, according to the provisions of the laws and regulations, in exercise of the powers which have been conferred on me, in the name of the Mexican nation, I have resolved to grant to him the said land, declaring him to be the proprietor thereof, by the present letters, with the understanding that this grant is made entirely in conformity with the laws, with the reservation that it shall be approved by the most excellent departmental assembly, and under the following conditions:

1. He may enclose it without prejudice to the roads and servitudes, and enjoy it freely and exclusively, devoting it to such use and cultivation as may suit him best.

2. He shall petition the judge of the place to put him in juridical possession of the land, in virtue of this order by whom the boundaries shall be marked out with the proper landmarks.

3. The land of which donation is thus made consists of two
23 sitios de ganado mayor, as shown by the map attached to the expediente. The judge who may give the possession shall have it measured according to ordinance, the excess remaining to the nation for convenient purposes.

Wherefore, I order the present title to be held as firm and valid, that entry be made of it in the proper book, and that it be delivered to the petitioner, for his security and other ends.

Given at the city of Los Angeles, on this 4th day of October, one thousand eight hundred and forty-five.

This title has been entered in the corresponding book, Angeles, October, 1845.

This espediente having been submitted to the most excellent departmental assembly, in its session of this day, it was ordered to be referred to the committee on vacant lands.

PIO PICO, *President.*
AGUSTIN OLVERA, *Secretary.*

24 MOST EXCELLENT SIR: The committee on vacant lands having considered the expediente on the part of the Mexican citizen, by naturalization, Don Juan Bidwell, soliciting the tract of land, called Colus, on the bank of the river Sacramento, which has been assigned to him as his property by the departmental government, of the extent of two sitios de ganado mayor, presents to the deliberation of your excellencys, the following propositions:

1. The grant made by the superior departmental government, in the title delivered on the 4th instant, in favor of Don Juan Bidwell, of the ownership of the tract called Colus, on the river Sacramento,

---

(*NOTE BY THE TRANSLATOR.—In the original the words first written meant bounded by the river Sacramento on the northeast; the words signifying bounded by were, however, erased, and those signifying on the banks of were substituted.)

in extent of two sitios de ganado mayor, in entire conformity with the law of the 18 of August, 1824, and the regulation of the 21 November, 1828, is approved.

2. The grantee will take care to comply with the provisions of the 12 article of the said regulation of 1828, in order to be enabled to dispose freely of this property.

Committee room, Angeles, October 8th, 1845.

(Signed) FRANCISCO DE LA GUERRA.
NARCISO BOTELLA.

25 ANGELES, *October 8th*, 1845.

The most excellent departmental assembly, in its session of this day, approved the two propositions made in the preceding report, and ordered the expediente in question to be returned to the most excellent governor for further disposition.

PIO PICO, *President.*
AGUSTIN OLVERA, *Secretary.*

On the same day a copy of the same was delivered to the person interested.

SAN FRANCISCO, *March 29th*, 1852.

The preceding translation was made by the undersigned, Robert Greenhow, attorney-at-law, from the Spanish copy made from the original in the office of the surveyor general of California, to which copy was attached the following certificate:

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such having in my office
26 and under my charge and control a portion of the archives of the former Spanish and Mexican Territory and department of Upper California, do hereby certify that the eleven preceding pages of tracing paper, numbered from one to eleven, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibits true and accurate copies of certain documents now on file and forming part of the said archives in my office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, at this seventeenth day of February, A. D. 1852.

SAM'L D. KING, *Sur'r Gen'l, Cal.*

And I declare that this my translation is a true and accurate version of the contents of the said copy.

ROBERT GREENHOW.

I, George Fisher, secretary of the board of United States commissioners to ascertain and settle the private land claims in the

27 State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document on file in this office, in case No. 144, Chas. D. Sample, and in my keeping and custody as such secretary.

Witness my hand this 30th July, 1853.

Filed in office March 31st, 1852.

GEO. FISHER, *Sec'y.*

Exhibit N. H. Hall, annex'd to dep. of John Bidwell.

Sello primero.—Ocho pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el departamento de los Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA.

[SEAL.] Pio Pico, primer vocal de la ex'ma asamblea y gobernador ynterio del departamento de los California:

Por cuanto Dñ. Juan Bidwell ha pretendido para su benefi-
28 cio personal el terreno conocido con el nombre de Colus en la Orilla del Rio del Sacramento al rumbo N. E. practicados previamente las diligencias y averiguaciones concernientes segun lo dispuesto por las leyes y reglamentos usando de los facultades que me son con feridas á nombre de lanacion Mejicana he venido en concederle el espresado terreno declarandolo la propiedad de el por las presentes letras entendiendose d'ha concesion de entera conformidad con las leyes á reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1*a.* Podran cercarlo sin perjudicar los caminos y servidumbres, lo disfrutará libre y esclusivamente destinandolo al uso y cultivo que mas le acomode.

2*a.* Solicitara del juez respectivo le de posesion juridica en virtud de este despacho por el cual se demarcaran los linderos con los mojoneras necesarias.

3*a.* El terreno de que se hace donacion es de dos sitios de ganado mayor segun esplica el diseño que obra en el espediente.

29 El juez que diese la posesion lo hará medir conforme á ordenanza que dando el sobrante que resulte á la nacion para los usos que le convengan.

En consecuencia mando que teniendose por firme y valedero se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de Los Angeles á cuatro de Octubre de mil ochocientos cuarenta y cinco.

PIO PICO.
JOSÉ MA. COVARRUBIAS, *S'rio.*

Queda tomada razon de este titulo en el libro respectivo.
Angeles, fecha ut supra.

COVARRUBIAS.

Filed in office August 17th, 1853.

GEO. FISHER, *Sec'y.*

30 *Translation of the Exhibit "N," H. Hall, annex'd to dep. of J. Bidwell.*

First stamp.—Eight dollars.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

MICHELTORENA.
PABLO DE LA GUERRA.

[SEAL.] Pio Pico, chief member of the most excellent assembly and governor ad interim of the department of the Californias:

Whereas Don Juan Bidwell has petitioned, for his personal benefit, the tract of land known by the name of Colus, on the bank of the river Sacramento, to the N. E. direction, the steps and investigations concerning thereto having been previously taken according to the dispositions of laws and regulations, exercising the powers conferred upon me, in the name of the Mexican nation, I have granted to him the said tract of land, declaring to him the ownership thereof by the present letters—said grant to be understoed to be fully in accordance with the laws—at the reserve of the approval of the
31 most excellent departmental assembly, and upon the following conditions:

1st. He may fence it without injuring the roads and servitudes; he shall enjoy it freely and exclusively, appropriating it to such use and cultivation as may suit him best.

2nd. He shall apply to the proper officer to give him juridical possession, by virtue of this dispatch, by whom the boundaries shall be marked out with the necessary landmarks.

3rd. The tract of which donation is made to him is of two sitios de ganado mayor, as mentioned in the sketch annexed to the expediente. The officer giving the possession shall cause it to be measured according to ordinance, the surplus thereof to remain to the nation for convenient uses.

Whereupon I order that, being held firm and valid, entry thereof be made in the proper book, and it be delivered to the party
32 concerning for his safety and other ends.

Given in the city of Los Angeles on the 4th of October, 1845.

(Signed) PIO PICO.
" JOSÉ MA. COVARRUBIAS, *Sec'y.*

Entry of this title is made in the proper book.
Angeles, date ut supra.

(Signed) COVARRUBIAS.

Exhibit M, H. Hall, annex'd to dep. of J. Bidwell.

Pio Pico, gobernador interino del departamento de las Californias:

La ex'ma asamblea departamental en sesion de hoy ha acordado lo siguiente:

1a. Se aprueba la concesion hecha en propiedad por el superior gobierno departamental, en titulo librado fecha 4 de este mes á favor de D'n Juan Bidwell del parage llamado Colus, en el Rio del Sacramento, y en la estencion de dos sitios de ganado mayor de entera conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828.

33 2a. El agraciado cuidara de cumplir con lo prevenido en el articulo 12 del citado reglamento de 1828, para disponer libremente de esta propiedad.

Y para resguardo de la parte de Dn. Juan Bidwell lo hago asi saber.

Dado en la ciudad de Los Angeles en este papel comun por falta del sellado á ocho de Octubre de mil ochocientos cuarenta y cinco.

PIO PICO.

JOSÉ MA. COVARRUBIAS, *S'rio.*

Filed in office August 17th, 1853.

GEO. FISHER, *Sec'y.*

Translation of the Exhibit M, H. Hall, annex'd to dep. of John Bidwell.

Pio Pico, governor *ad interim* of the department of the Californias:

The most excellent departmental assembly in session of this day has resolved the following :

1st. The grant made in fee by the superior departmental
34 government, by title issued on the 4th of this month in favor of Dn. Juan Bidwell for the place named Colus, on the river Sacramento, and to the extent of two sitios de ganado mayor, is approved fully, in accordance with the law of 18 of August of 1824, and the regulation of 21st of November, 1828.

2nd. The grantee shall be careful in complying with the provisions in article 12 of the said regulation of 828, (1828,) to dispose freely of this property.

And for safety on the part of Don Juan Bidwell, thus I make it known. Given in the city of Los Angeles on this common paper, for want of the sealed one, on the 1st of October, one thousand eight hundred and forty-five.

(Signed) PIO PICO.

(Signed) JOSE MA. COVARRUBIAS, *Sec'y.*

35 *Transfer—John Bidwell to Charles D. Sample.*

John Bidwell to C. D. Sample.—Deed.—2 leagues, Sacramento.

This indenture, made and entered into this 22nd day of January, A. D. 1850, between John Bidwell and Charles D. Sample, both of

the State of California, witnesseth: That for and in consideration of the sum of two thousand dollars, in hand paid, the receipt whereof is hereby acknowledged, the said Bidwell hath bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey, unto the said Semple all right, title, and claim in and to a certain tract or parcel of land in the said State, on the north or west side of the river Sacramento, containing two square Spanish leagues, as appears by the grant from the Mexican government to the said Bidwell, bearing date the 4th day of October, A. D. 1845, which said tract is bounded as follows, to wit: Beginning at the lower corner of the tract commonly called "Larkin's ranch," on the north or west bank of the river Sacramento; thence down the said river, binding thereon two
36 Spanish, to a stake on the bank of the river; thence out from the river, at right angles with the last-mentioned line, one Spanish league to a stake; thence up the said river two Spanish leagues, parallel with the first-mentioned line, to a stake; thence one Spanish league to the beginning—which will more fully and accurately appear by reference to the petition and map upon which the said grant of the 4th of October, 1845, was founded, now amongst the archives of the province (now State) of California. To have and to hold the above tract or parcel of land, with its appurtenances, in as full and ample a manner as the said Bidwell himself might or could do under the grant aforesaid, unto the said Semple, his heirs and assigns forever. And the said Bidwell covenants to warrant and defend the title to the said tract of land only against the claims of himself, his heirs and assigns, and no others whatsoever.

In testimony whereof, the said Bidwell hath hereunto set
37 his hand and affixed his seal the day and year first above written.

J. BIDWELL. [SEAL.]

The words "or west," interlined twice before signed.

Witnesses:

J. D. HOPPE.
J. S. BRADFORD.

STATE OF CALIFORNIA,
Santa Clara County, ss:

Be it remembered that on this the 18th day of September, 1850, before me, John T. Richardson, recorder in and for said county, J. D. Hoppe and J. S. Bradford, personally known to be the persons who subscribed their names as witnesses to the foregoing instrument, and acknowledged that they witnessed the signing of the said instrument, freely and for the purposes therein mentioned, by the grantor, J. Bidwell.

In testimony whereof, I have hereto set my hand and affixed
38 my private seal, there being no official seal, the date last above written.

JOHN T. RICHARDSON,
Recorder.

[SEAL.]

Filed in office March 31st, 1852.

GEO. FISHER, *Sec'y.*

Opinion of Alpheus Felch.

CHARLES D. SAMPLE *vs.* THE UNITED STATES. } For the place named "Colus," being two square leagues of land.

It appears from the expediente a traced of which is filed in the case, that Juan Bidwell petitioned for a grant of the land, June 28, 1845; that the governor referred the petition for information, and after reports thereon were received, he made an order of concession, under date of October 2, 1845. On the fourth of the same month the governor, Pio Pico, issued the grant, subject to the
39 approval of the departmental assembly, which approval was given four days afterwards.

The land solicited is described in the petition as "the tract of land known by the name of Colus," on the bank of the river Sacramento, which tract is vacant and contains two sitios, bounded thus: "On the northwest by vacant land; on the northeast by the Sacramento; on the south and southwest by vacant land, as shown in the drawing annexed to this petition." In the grant the land petitioned for is alleged to be "the tract of land known by the name of 'Colus,'" on the bank of the river Sacramento, to the northeast direction, "and this is granted, the applicant to obtain juridical possession, having the two square leagues which are granted to him set apart by metes and bounds, the surplus thereof to remain the property of the nation." The only thing which is certain in these descriptions is that the land is bounded on one side by the Sacramento river. There is nothing to fix the place along the river
40 where it is located, nor to identify a single point where it touches that stream. The three other sides are mentioned in the description, but on these sides the land is stated to be bounded by vacant land; the reference to those boundaries is not made to lines already run and known, and which could be found on the face of the earth. The whole region, as well as that proposed to be granted as that by which it would be incompassed when surveyed and segregated, is represented as vacant land. The allegation that the premises granted are bounded by the vacant land on three sides indicate nothing more than that the vacant land granted is to be located in a large tract of vacant land belonging to the nation, and that, when the land is located, the lines will divide it from the unappropriated portion; but no indication is given as to the place where the lines are to be run or the separation of the land to be made. Nor is this aided by the map which was filed by the claimant and which is before
41 us as a part of the espediente. There is, it is true, drawn upon it, purporting to show the form and outline of the tract in which the premises granted were to be located, but they appear to drawn arbitrarily through the natural lands, without anything to indicate why they are placed in the position which they occupy on the map, or whereon there are to be found on the face of the earth by a surveyor. They are mere lines on paper, never run, so far as we

have any evidence on the subject, and having no monuments or landmarks to indicate the locality. The three sides of the tract which are not identical with the river, have no description which will not as well be answered by a line drawn in one place as in another through the vacant lands, and there is no descriptions which fixes the front on any specified portion of the length of the Sacramento.

The grantee was required by the terms of the grant to procure a juridical survey, and thus to locate his land with defined limits and boundaries, and to place proper monuments to perpetuate the
42 evidence of its limits and extent, but this has never been done.

There are no marks, monuments, angles, or description given, either in the title-papers or the evidence before this commission, which can be considered as locating the land granted and separating it from the immense tract of vacant land on the river Sacramento, or by which a surveyor could be guided so as to make the survey.

There are several other questions presented by the counsel for the government in the case, but as the objection above mentioned is fatal to the claim, it is not necessary to examine them.

Confirmation refused.

Filed in office Oct. 25th, 1853.

GEO. FISHER, *Sec'y.*

Decree.

CHARLES D. SEMPLE
vs.
THE UNITED STATES.

43 In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Oct. 25th, 1853.

GEO. FISHER, *Sec'y.*

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertaid and settle the private land claims in the State of California, do hereby certify the foregoing thirty-six pages, numbered from one to thirty-six, both inclusive, to contain a true, correct, and full
44 transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and

of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 144 on the docket of the said board, wherein Charles D. Sample is the claimant against the United States for the place known by the name of Colus.

In testimony whereof, I hereunto set my hand and affix my private [SEAL.] seal, (not having a seal of office,) at San Francisco, California, this fifth day of August, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed August 5th, 1854.

JOHN A. MONROE, *Clerk.*

Notice of appeal.

45 CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America approved on the 3rd of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," did, on the 25th day of October, 1853, by their decision of that date, decide against the claim presented by the undersigned to the said commissioners, which claim is No. 144 on the docket of claims before said board, and is for lands lying in the said northern district; and the said claimant being desirous that the said district court should review the said decision, now hereby files his notice, in the said clerk's office, of his intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses
46 of the government for the year ending the thirtieth of June, 1853, and for other purposes," which said act was approved on the 31st of August, 1852.

April 17th, 1854.

CHARLES D. SEMPLE,
Assignee of John Bidwell, original grantee,
By his attorneys, THORNTON & WILLIAMS,

Endorsed: Filed April 17, 1854.

JOHN A. MONROE, *Clerk,*
By SCHELL, *D. C.*

Notice of appeal.

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America approved
47 on 3rd of March, 1851, entitled, "An act to ascertain and settle the private land claims in the State of California," did, on the 25th day of October, 1853, by their decision of that date, decide

against the claim presented by the undersigned to the said commissioners, which claim is No. 144 on the docket of claims before said board, and is for land lying in the said northern district: and the said claimant being desirous that the said district court should review the said decision, now hereby files this notice, in the said clerk's office, of his intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the thirtieth of June, 1853, and for other purposes," which said act was approved on the 31st of August, 1852.

October 5th, 1854.

CHARLES D. SEMPLE,
Assignee of John Bidwell, original grantor,
48 By his att'ys, THORNTON & WILLIAMS.

Endorsed: Filed Oct. 5, 1854.

JNO. A. MONROE, *Clerk.*

Order permitting evidence to be taken.

At a special term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Tuesday, the 21st day of November, in the year of our Lord one thousand eight hundred and fifty-four.

Present: the honorable I. S. K. Ogier, district judge.

CHARLES D. SEMPLE
vs.
THE UNITED STATES. } No. 28.

On motion of counsel for appellant, and with the consent of
49 the U. S. dis't att'y, ordered that leave be granted to all the parties to take further evidence in this cause, upon reasonable notice before a U. S. comm'r of this court.

Endorsed: Filed Nov'r 21st, 1854.

JOHN A. MONROE, *Clerk.*

Appeal notice by Att'y Gen'l.

CHARLES D. SEMPLE,
vs.
THE UNITED STATES. } 44.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 30th November, 1854.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 1st day of
50 August, 1854, the appeal in the district court of the United

States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed January 8, 1855.

JOHN A. MONROE, *Clerk.*

Dep. of John Bidwell.

United States district court, northern district of California.

SAN FRANCISCO, *February 9th*, 1855.

On this day, before W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Bidwell, a witness produced on behalf of the claimant in case No. 28, being an appeal from the board of commissioners to ascertain and settle the private land
51 claims in the State of California, in case No. 144 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: John J. Williams, of counsel for claimant, and the U. S. dist. attorney, by Andrew Glassell, esq'rs.

Question by claimant. What is your name, age, and place of residence?

Answer. John Bidwell; am 35 years of age, and reside in Butte county, California; I have resided in this State since the year 1841.

Question 2d. Are you acquainted with the rancho "Colus," claimed in this case?

Answer. I am.

Question 3d. Look, if you please, upon the map contained in the record filed in this case, and state by whom and when the original of said map was made; and describe the boundaries of said rancho
52 in reference thereto.

Answer. The original of said map was made by me in 1845, and presented with my petition to the governor, upon which the grant was made. There is a very noted point on the Sacramento river, being a high mound, the site of the rancheria "Colus." The northern boundary begins on the Sacramento river, at a point just one league above said "Colus" rancheria, and runs directly back from the river, at right angles with the general course of the river, one league; thence parallel with the general course of said river, and down said river so far as to include two square leagues of land. This noted point or mound above spoken of, is on the western bank of the Sacramento river. The tract was intended to be, as expressed on this map, two leagues long and one wide.

Question 4th. Please state why there was no other occupa-
53 tion of this rancho than that described in your former deposition in this case.

Answer. Because hostilities broke out between the United States

and Mexico, and I went into the war on the part of the United States. In the spring of 1846 I employed a man to go there and live and take charge of the place for me. He died very shortly afterwards.

Cross-examined by U. S. att'y.

Question 1st. Have you any interest in the event of this cause?

Answer. None whatever.

Question 2nd. Did you ever make any survey, and if so, what kind of survey, from which to plot said map?

Answer. I made no other survey than a general reconnoissance by riding over it, using a pocket compass—not riding on the boundaries, particularly, but over the whole tract, generally.

Direct resumed.

54 Question 5th. By the aid of said map establishing the beginning point, as stated by yourself, could or could not an accurate survey of this land be made?

Answer. I could locate it accurately, and I think any other surveyor could.

Question 6th. Are you a practical surveyor; and if so, how long have you been engaged in surveying?

Answer. I am a practical surveyor; I have been more or less engaged in surveying ever since the year 1839.

J. BIDWELL.

Sworn to and subscribed this 9th of Febr'y, before me.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed Febr'y 9, 1855.

W. H. CHEVERS, *Dep. Cl'k.*

55 *Dep. of L. B. Mizner.*

United States district court, northern district of California.

SAN FRANCISCO, *April 4th*, 1855.

On this day, before W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came L. B. Mizner, a witness produced on behalf of the claimant in case No. 28, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 144 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: James D. Thornton, att'y for cl't, and Andrew Glassell, esq., acting U. S. district attorney.

Question 1st, by claimant. What is your name, age, and place of residence?

Answer. L. B. Mizner; 27 years of age; and reside in Benicia, California.

56 Question 2nd. Do you know the Rancho de "Colus?" and if yea, state what you do know about it.

Answer. I know said rancho; I was there in December, 1849. Saw the rancheria of Colus Indians, and a corral (Spanish or Mexican) right on the bank of the Sac. river, some two hundred yards below the aforesaid rancheria.

Question 3rd. By what name were the said Indians known?

Answer. They were known by the name of Colus Indians, and lived in a rancheria on a mound.

L. B. MIZNER.

Sworn to and subscribed before me this 4th day of April, A. D. 1855.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed April 4th, 1855.

JOHN A. MONROE, *Clerk.*

57 *Depo. of O. M. Wozencraft.*

United States district court, northern district of California.

SAN FRANCISCO, *April 4th*, 1855.

On this day, before W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came O. M. Wozencraft, a witness produced on behalf of the claimant in case No. 28, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 144 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: James D. Thornton, att'y for claimant, and the U. S. dist. att'y, by A. Glassell, esq'r.

Question 1st, by claimant. What is your name, age, and place of residence?

Answer. O. M. Wozencraft; 38 years of age; my place of residence, San Francisco, Cal.

58 Question 2nd. Do you know the Rancho de "Colus?" and if so, state what you know.

Answer. I know the Colus rancheria of Indians. In August, 1851, I was a U. S. Indian commissioner, and, as such commissioner, gained a full knowledge that these Indians had been there a very great number of years. This is the only tribe of "Colus" Indians in California. These Indians inhabited a large mound or rancheria about 150 yards from the steamboat landing, in the present town of Colusa, between six or eight miles from the Buttes, in a west by north direction, on the west bank of the Sacramento river.

Question. 3d. If you know, please state if there are any sloughs, hills, creeks, or any other notorious or distinctive objects in the neighborhood of said rancheria; and if so, how far off are they?

Answer. The adjacent country is comparatively level. About

eight miles south of the rancheria there is a slough called Sycamore slough. About half a mile north there is a small slough, which, during the rainy season, is filled with running water. Independent of the two sloughs and the Indian mound, all of which I have before mentioned, there are no other distinctive objects by which the location could be fixed.

O. M. WOZENCRAFT.

Sworn to and subscribed before me this 4th day of April, 1855.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed April 4th, 1855.

JOHN A. MONROE, *Clerk.*

Petition.

To the honorable district court of the United States in and for the northern district of California:

Your petitioner respectfully represents to this honorable court that he did heretofore, as will fully appear by the transcript of the proceedings had before the board of commissioners to ascertain and settle the private land claims in the State of California, now on file in this court, present before the said board, whilst holding its session in the city of San Francisco, a claim for the land lying and being in the State of California and northern district thereof, and which said land is fully described in the said transcript, being claim No. 144 of the list of claims presented to said board under and by virtue of the act of Congress approved on the 3d of March, 1851.

The claim of the petitioner is founded upon a grant made by Pio Pico, under the authority of the Mexican government, as governor of the department of California, on the 4th of October, 1845, to one John Bidwell, and upon the conveyance of said Bidwell executed to this petitioner; all of which will appear in the transcript of proceedings had as aforesaid.*

Your petitioner respectfully represents that the said claim has been rejected by the said board, and he now here humbly prays this honorable court to review the decision of the said board, and to decide on the validity of their claim.

CHARLES D. SEMPLE,
By his att'ys, THORNTON, WILLIAMS & THORNTON.

I acknowledge due service of the above petition this 7th day of April, 1855.

A. GLASSELL,
Acting U. S. Dist. Att'y.

*Here insert the following:
And your petitioner would further state, that on the 5th day of

August, 1854, the said transcript, and on the 17th of April and 5th of October, 1854, notice of his intention to prosecute an appeal, as required by law, were filed in the clerk's office of this hon'ble court, as will appear by the record.

THORNTON, WILLIAMS and THORNTON.

Amended by consent, June 13, 1855.

A. GLASSELL,
Ass't U. S. Dist. Att'y, &c.

Endorsed: Filed April 7, 1855.

JOHN A. MONROE, *Clerk.*

62 *Answer.*

In the district court of the United States for the northern district of California.

THE UNITED STATES, appellees, *ads.*
CHARLES D. SEMPLE, appellants.

The above-named appellees, by their attorney, deny the validity of the title of the said claimant, the above-named appellant, set out in his said petition, and pray that the court may affirm the decision of theboard of commissioners, and decree the said title to be invalid.

A. GLASSELL,
Ass't U. S. Dist. Att'y, &c.

Endorsed: Filed June 14, 1855.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Opinion confirming claim.

63 THE UNITED STATES *vs.* CHARLES D. SEMPLE.

The evidence in this case shows that on the twenty-eighth of June, 1845, John Bidwell petitioned the governor for a grant of land. After the usual reference for information and reports thereon, a grant was issued on the fourth of October, 1845, by the governor, Pio Pico, subject to the approval of the departmental assembly, which approval was given four days afterwards. The genuineness of the grant is not disputed.

The land solicited is described in the petition as "the tract of land known by the name of 'Colus,' on the bank of the river Sacramento, which tract is vacant, and contains two sitios, bounded thus:

on the northwest by vacant land; on the northeast by the river Sacramento; on the south and southwest by vacant land—as shown by the drawing annexed to this petition."

In the grant the land granted is described as the tract of land known by the name of "Colus," on the bank of the river Sacramento, to the northeast direction.

64 Under the evidence submitted to the board, this claim was rejected for want of definiteness of boundaries, or any description sufficient to enable a surveyor to locate it.

It was considered by the board "that the only thing which is certain in this description is, that the land is bounded on one side by the Sacramento river; that there is nothing to fix the place along the river where it is located, or to identify a single point where it touched that stream."

It was further considered by the board that this defect was unaided by the map which accompanied the petition, and forms a part of the expediente, as nothing appeared in the evidence to show why the lines were placed in the position they occupy on the map, or how they are to be found by a surveyor. "They are," say the commissioners, "mere lines on paper, having no monuments or landmarks to indicate the locality. The three sides of the tract which are not identical with the Sacramento river have no description which will not as well be answered by a line drawn in one place as in

65 another through the vacant lands; and there is no description which fixes the front on any specified portion of the length of the Sacramento."

To meet the objections stated in the above extracts from the opinion of the commissioners, additional testimony has been taken in this court.

By the evidence of John Bidwell, the original grantee, it appears that the original of the map contained in the expediente was made by him in 1845, and presented with his petition to the governor; that there is a very noted point on the Sacramento river, being a high mound, the site of the rancheria "Colus." The northern boundary begins on the Sacramento at a point just one league above said "Colus" rancheria, and runs directly back from the river, at right angles with its general course, one league; thence parallel with the general course of the said river, and down said river so far as to include two square leagues of land. The tract was intended to be, as expressed in the map, two leagues long and one wide.

66 The witness adds, that with the aid of the map, and establishing the beginning point as stated, he or any other surveyor could locate it accurately.

The testimony of this witness is confirmed by O. M. Wozencraft and L. B. Mizner.

The former of these witnesses was, in 1851, United States Indian commissioner, and as such acquired full knowledge that the "Colus" Indians had been on the Rancho de Colus a very great number of years.

The tribe, which is the only one of that name in California, in-

habited a large mound or rancheria, about one hundred and fifty yards from the steamboat landing, in the present town of Colusa, between six and eight miles from the Buttes, in a west by north direction, on the west bank of the Sacramento river.

These Indians, known as the "Colus" tribe, were still inhabiting their rancheria, on the mound spoken of, as late as 1849, as appears from the testimony of L. B. Mizner.

67 The map, which forms a part of the expediente, indicates the general form of the land solicited, precisely as testified by the witness Bidwell. It is made with some skill, and is much superior to the rude delineations which accompany most of the Mexican expedientes.

The mound, or Rancheria de "Colus," is distinctly indicated on this map, and in a position entirely corresponding with that described in the testimony of the witnesses, as appears from the scale attached to the map. It is evident, from an inspection of the map, that if the Rancheria de Colus can be found, a surveyor with the aid of the map could have no difficulty in locating the land. That the rancheria, and the mound on which it was situated, can be found, the testimony leaves no room to doubt.

We think that the objection of the commissioners, that there are no monuments or natural landmarks to indicate the locality of the grant, and no description which fixes the front on any specified portion of the length of the Sacramento river, is effectually re-

68 moved by the evidence taken in this court.

With respect to the performance of the conditions, it appears that when the grantee first received his grant, in October, 1845, he intended to occupy his land the following summer, but was prevented from doing so by the hostilities which began in 1846, between Mexico and the United States. He, however, employed a man in that year to live upon his land and take charge of it, but he died very shortly afterwards. The witness served in the American army during the war, and in June, 1849, immediately after its conclusion, he built a corral upon his land for his cattle. In January, 1850, he conveyed the land to Semple, the present claimant, who immediately took possession of and occupied it.

The excuses for not fulfilling the conditions are, it will be seen, at least as satisfactory as those decided in the case of Frémont to be sufficient. In this case there has been no unreasonable delay, and the reasons for not occupying the land are such as, by an

69 American court, should be received with favor. There is no pretense to say that the grant was abandoned, for the grantee seems to have commenced the improvements of his land as soon as the cessation of hostilities permitted him to do so.

It is to be observed, in addition, that the grant in this case was approved by the departmental assembly, and a complete title passed to the grantee. His grant was thus, by the regulations of 1828, *definitively valid*, and the Mexican title completely divested. The grant in the case of Frémont had never received the approval of the departmental assembly. Whether in any case of a grant made defini-

tively valid by the approval of the assembly, this court can decree a forfeiture for the breach of conditions subsequent, it is not now necessary to inquire; for the right of the claimant is clear on the principles laid down in the last, as well as on the earlier, decisions of the Supreme Court.

No other objections to the confirmation of this claim have
70 been brought to our notice, nor do any others occur to us on examination of the record in the case.

A decree of confirmation must, therefore, be entered.

Endorsed: Filed July 5th, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Decree of confirmation.

CHARLES D. SEMPLE
vs. } No. 28.—Decree.—Stated term, July 5th, 1855.
THE UNITED STATES.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on this day to be heard, upon the certified transcript of the proceedings and decision of the board of commis-
71 sioners on private land claims in California, and of the papers and evidence on which the same are founded, the pleadings and further evidence taken by order of this court, and the counsel of both parties being present—

In consideration whereof, the court is of opinion that the decision of said board of commissioners rejecting this claim is erroneous, and the same is hereby reversed.

And this court doth adjudge, order, and decree that the claim of the petitioner to the tract of land known as Colus is valid, and the same is hereby confirmed to him to the extent of two square leagues, and for no more, being the same land described in the grant, and in the maps and espediente referred to therein; provided that the said quantity of land granted, and now here confirmed, be contained within the boundaries called for in the said grant and maps to which the grant refers; and if there be less than the said above-named quantity within the said bounds, then that less quantity is hereby confirmed, it being apparent that the said quantity exceeds
72 the minimum of two hundred varas square, as prescribed by the ordinance of the 21st of November, 1828, of the Mexican government.

M. HALL McALLISTER,
Circuit Judge.
OGDEN HOFFMAN, JR.,
Dist. Judge.

73 *Order granting appeal.*

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-house

in the city of San Francisco, on Thursday the fifth day of July, in the year of our Lord one thousand eight hundred and fifty-five. Present: Hon. M. H. McAllister, circuit judge, and the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES
vs.
CHARLES D. SEMPLE. } No. 28.

In this case, on the application of the U. S. dist. att'y, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed July 5th, 1855.

74 JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Decree to file mandate U. S. Supreme Court.

In the district court of the United States, in and for the northern district of California.

CHARLES D. SEMPLE
vs.
THE UNITED STATES.

The mandate of the Supreme Court of the United States in the above case being this day read in open court, and it appearing therefrom that the appeal heretofore granted in this case to the Supreme Court of the United States has been dismissed, now, on motion of the said Charles D. Semple, by his attorney, it is ordered, adjudged, and decreed that the said mandate be filed, and leave be, and is hereby, given to the said Charles D. Semple to proceed under the decree of this court, heretofore rendered in his favor as under final decree of confirmation.

OGDEN HOFFMAN, *Dist. Judge.*

75 SEPT. 3, 1857.

Endorsed: Filed Sept. 3, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Supreme Court mandate.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States of America to the honorable the judge of the district court of the United States for the northern district of California, greeting:*

Whereas, lately in the district court of the United States for the northern district of California, before you, in a cause between Charles

D. Semple, petitioner against the United States, wherein a decree was rendered in favor of the said petitioner, whereupon the said United States prayed an appeal, which was duly allowed by the said district court, to remove the said cause to the Supreme Court of the United States, as by the inspection of the transcript of the
76 record, under the seal of the said district court, which was brought into the Supreme Court of the United States, agreeably to the act of Congress and the rules of the said Supreme Court in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-five, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and it appearing that the United States have failed to have their cause filed and docketed in conformity to the rules of this court: It is now here ordered, adjudged, and decreed, by this court, that this appeal from the district court of the United States for the northern district of California be, and the same is hereby, docketed and dismissed; and that this cause be, and the same is hereby, remanded to the said district court.

APRIL 25th.

You, therefore, are hereby commanded that such further proceedings be had in said cause as, according to right and justice and
77 the laws of the United States, ought to be had, the said appeal notwithstanding. Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-five.

(Duplicate.)

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Endorsed: Filed Sept. 3, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Order to return survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on 30th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Ogden Hoffman, district judge.

CHARLES D. SEMPLE
vs.
THE UNITED STATES. } No. 28 D. C.—No. 144 L. C.

78 Upon motion of the said claimant, by his attorney, it is ordered that the surveyor general of the United States for the

State of California return into this court the survey, by him made and approved, of the rancho "Colus" claimed in the above case.

Endorsed: Filed May 30th, 1859.

W. H. CHEVERS, *Clerk.*

[Here follows Exhibits A and B, (plats), page 78.]

Sta.	Courses.	Chains.	Sta.	Courses.	Chains.
1	West	40. 00	12	South	80. 00
2	South	81. 75	13	East	80. 00
3	East	40. 00	14	North	160. 00
4	South	40. 00	15	West	120. 00
5	East	40. 00	16	North	40. 00
6	South	40. 00	17	West	40. 00
7	East	35. 23	18	North	40. 00
8	South	40. 00	19	West	35. 23
9	East	40. 00	20	North	41. 75
10	South	40. 00	21	West	40. 00
11	East	40. 00	22	North	40. 00

The field-notes of the Colus rancho, and from which this plat has been made out, have been examined and approved, and are on file in this office.

(Signed) J. W. MANDEVILLE,
U. S. Surv'r Gen'l.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, November 4th, 1858.

U. S. SURVEYOR GENERAL'S OFFICE.

I certify this to be a true, full, and correct copy of the original on file in this office.

Given under my hand and seal of office, at the city of San Francisco, California, this sixth day of June, A. D. 1859.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surv'r Gen'l, California.

79 *Statement accompanying plat.*

CHARLES D. SEMPLE
vs.
THE UNITED STATES. } No. 28 D. C.—144 L. C.

In this case instructions were issued to W. J. Lewis, dep. sur., on the 24th Sept'r, 1857, but upon the return of the survey of the "Jimeno" rancho, (under a grant dated Nov'r 2d, 1844,) the greater portion of the land embraced within the grant, (dated Oct'r 20, 1845,) and diseño of the "Colus," was found to be within the exterior lines of the survey of the Jimeno rancho.

After a most thorough examination, and in obedience to the instructions of the department in such cases, the whole matter was referred to Washington for decision, under date of Feb'y 19th, 1858.

The department, under date of June 29th, 1858, in answer thereto, issued an opinion, upon the basis of which I ordered a resurvey of the "Colus" and "Jimeno" ranchos; the plat and field-notes of which were returned by the deputy, and approved by me, and sent to the department.

The plat marked A, filed herewith, is a copy of the survey
80 of the "Colus" rancho, as thus forwarded, and embracing all the land within the boundaries of the grant and diseño of said rancho that had not been included in the survey of the "Jimeno" rancho, and made part thereof.

Under date of March 14th, 1859, the department acknowledge the receipt of approved plat of the "Jimeno" and "Colus" ranchos, and state as follows: "I have to inform you that your action in the case of the former is approved by this office."

A survey of both ranchos has been made in accordance with the views of the owners of the "Colus," and were submitted to the department at the same time with the approved surveys heretofore mentioned.

A copy of the survey of the "Colus," as thus surveyed, is herewith filed, and marked B.

J. W. MANDEVILLE,
U. S. Sur. Gen'l.

Hon. OGDEN HOFFMAN,
U. S. Dist. Judge, Northern District of California.

Endorsed: Filed June 6, 1859.
81 W. H. CHEVERS, *Clerk.*

Claimant's exceptions to survey.

In the district court of the United States in and for the northern district of California.

CHARLES D. SEMPLE
vs.
THE UNITED STATES. } D. C. 28.—L. C. 144.

The said Charles D. Semple excepts to the survey of the "Colus" rancho, claimed in the above case, as made and approved by the surveyor general for the reasons and on the grounds following:

1st. The grant and decree of confirmation call for two square leagues, whilst the survey, now here excepted to, contains but a small fraction over one-half of a league.

2nd. Because the said survey deprives the said Semple of nearly fourth of the land specified in his grant, and finally confirmed to him by decree of this hon. court.

82 3rd. Because the said survey is not of the land described in the petition, grant, map, and decree of final confirmation.

4th. Because the said survey is not a true and correct survey of the rancho "known by the name of Colus," which has been finally confirmed to the said Semple.

5th. Because the said survey was not made in accordance with the agreement between John Bidwell, original grantee of the "Colus" tract, and Thomas O. Larkin, owner of the adjoining land, fixing by said agreement the dividing line between them.

6th. Because the said survey is not in accordance with the agreement made between the said Semple and the present owner of the two upper leagues of the adjoining grant, agreeing and fixing the dividing line between said "Colus" tract and the said two leagues of the adjoining grant.

7th. Because the land included in the said survey is not
83 the same land finally confirmed to the said Semple.

8th. Because the said survey was made without notice, actual or constructive, to the said Semple.

9th. Because the said survey was made and forwarded to the said surveyor general then in the city of Washington, District of Columbia, before seen or heard of by the said Semple, and was by the said surveyor general acted on and approved in the said city of Washington.

10th. Because the said Semple was practically denied a hearing upon the said survey.

11th. Because the said survey is arbitrary, unjust, and oppresive to the said Semple, being made neither in accordance with the grant, map, or decree of final confirmation, and is an attempt to destroy vested rights and deprive the said Semple of the greater portion of his land.

12th. Because the said survey was not made in accordance
84 with the directions and principles contained and specified in the act of Congress approved March 3rd, 1859, entitled "An act to ascertain and settle the private land claims in the State of California."

13th. Because the said survey was not made in accordance with the opinion and instructions of the Secretary of the Interior to the said surveyor general, in regard to the survey of the "Colus" rancho.

THORNTON, WILLIAMS & THORNTON,
Att'ys for C. D. Semple.

Endorsed: Filed June 22, 1859.

W. H. CHEVERS, *Clerk.*

Order allowing further time to take testimony.

At a stated term of the district court of the United States of America for the northern district of California, held at the courthouse in the city of San Francisco, on Wednesday, the thirty-first day of August, in the year of our Lord one thousand eight
85 hundred and fifty-nine.

Present: The honorable Ogden Hoffman, district judge.

CHARLES D. SEMPLE *vs.* THE UNITED STATES. } L. C. No. 144.—D. C. No. 28.—Rancho Colusi.

It appearing to the court that, in obedience to its order, the surveyor general of the United States for the State of California has returned, and filed in the clerk's office of this court, his survey of the said Rancho Colusi, and that the said Charles D. Semple has filed his objections to the same: It is now hereby ordered that the parties to the above cause be allowed six weeks from this day to take further evidence in regard to the land confirmed, and as to its location, and boundaries, and the corrections of said survey.

86 Endorsed: Filed August 31st, 1859.
W. H. CHEVERS, *Clerk.*

Dep. of J. F. Gilmer, for claimant.

United States district court, northern district of California.

THE UNITED STATES *vs.* CHAS. D. SEMPLE. }

SAN FRANCISCO, *Oct.* 5, 1859.

On this day, before me, W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came J. F. Gilmer, a witness produced on behalf the claimant in case No. 28, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 144 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: C. D. Semple, in person, and Tully R. Wise, esq., acting U. S. att'y.

Questions by claimant.

87 Ques. 1. Please state your name, age, residence, and occupation.

Ans. 1. J. F. Gilmer; of lawful age; present residence, San Francisco; profession, military engineer, capt. in U. S. army.

Ques. 2. Please examine the diseño of the Jimeno grant, marked Exhibit No. 1, attached to the deposition of Samuel Smith, heretofore taken in this case, and state what are the contents of said map in square leagues, assuming as true that by actual survey it has been ascertained to be thirty-nine miles in a right line from the point marked "Estero," at the south end, to Larkins's children's grant at the north end.

Ans. 2. I find the area in square leagues to be 19½, approximately, (nineteen and a half.)

Ques. 3. Please describe the process by which you calculate the contents of a map with a scale upon it, and also natural objects marked upon it, the indentity of which are capable of proof.

88 Ans. 3. If there were any doubt as to the accuracy of the scale, I would determine the distance between the natural objects on the ground, and from this determined distance I could ascertain with accuracy the scale applicable to the plat; knowing this, I would calculate the area of land in the usual way, that is, by the lengths of the bounding lines, considering the shape of the plat.

J. F. GILMER.

Examination closed.

Sworn to before me this 5th day Oct., 1859.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed Oct. 13, 1859.

W. H. CHEVERS, *Clerk.*

Dep. of Casimir Bielawski, for claimant.

United States district court, northern district of California.

THE UNITED STATES }
vs. }
CHAS. D. SEMPLE. }

SAN FRANCISCO, *Oct.* 5, 1859.

89 On this day, before me, W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Casimir Bielawski, a witness produced on behalf of the claimant in case No. 28, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 144 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: C. D. Semple, in person, and Tully R. Wise, esq., acting U. S. att'y.

Questions by claimant.

Ques. 1. Please state your name, age and residence, and occupation.

Ans. 1. Casimir Bielawski; of lawful age; residence, San Francisco; occupation, draughtsman in U. S. surveyor general's office.

Ques. 2. Please state whether you have the custody of the
90 official approved maps of the public lands, and also those of private land claims, in the State of California.

Ans. 2. I have.

Ques. 3. How far is it in a right line from the southeastern corner of Larkin's children's grant, on the Sacramento river, to the centre of section 14, township 11 N., range 2 E., Monte Diablo meridian; and also how far from the last-mentioned point to the northern boundary of the Harbin or Rio de Jesus Maria grant, on Cache creek, originally called the Hardy grant?

Ans. 3. It is thirty-nine miles from the southeastern corner of Larkin's children's grant to the centre of section 14, and from this point to the Harbin or Hardy ranch, due south, it is three miles and a half.

Cross-examined.

Ques. 4. Are you in the surveyor general's office?

Ans. 4. I am.

91 Ques. 5. Has the Larkin's children's grant, on the Sacramento river, been located, and has that location been finally approved?

Ans. 5. It has.

Ques. 6. Has the Harbin grant been located and approved?

Ans. 6. It has.

Ques. 7. Your calculations of distances is based upon maps in the surveyor general's office, are they not?

Ans. 7. They are.

Exam. closed.

CASIMIR BIELAWSKI.

Sworn to before me this 5th Oct., 1859.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed Oct. 13, 1859.

W. H. CHEVERS, *Clerk.*

92 *Dep. of Stephen Cooper, for claimant.*

United States district court, northern district of California.

THE UNITED STATES }
vs.
CHAS. D. SEMPLE. }

SAN FRANCISCO, *Sept.* 29, 1859.

On this day, before me, W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Stephen Cooper, a witness produced on behalf of the claimant in case No. 28, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 144 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: C. D. Semple, in proper persona, and Tully R. Wise, acting U. S. att'y.

Questions by Mr. Semple.

93 Ques. 1. Please state your name, age, and residence?

Ans. 1. Stephen Cooper; aged 62; reside in Colusi co., Cal'a.

Ques. 2. Look at Exhibit No. —, to the deposition of Sam. R. Smith, taken this day, and state whether, from your knowledge of the objects noted on said diseño, you can name the positions of the southern boundary thereon, and what it is now called.

Ans. 2. I would fix it at or adjoining Knight's Landing. It is now called the mouth of the Sycamore slough.

Ques. 3. Describe the Sycamore slough, from its mouth upwards, for three miles.

Ans. 3. I never meandered it, but have crossed it in the fall season three miles above, or thereabouts. The appearance of the land at that distance is low, and shows that water stands on it in
94 the early part of the season.

Ques. 4. Have you passed over the trail called the Oregon trail; and if so, state what appearance the place, as described in your last answer, presented from that trail?

Ans. 4. I have passed up the road which leads up the Sacramento valley, and from that road it shows to be a sheet of water in the spring season.

Ques. 5. Examine the diseño in this case, and state, from the noted points marked on said map, where the Colus lands are, and what the place is now called?

Ans. 5. The Colus rancheria and the town of Colusa, being one and the same place, is on the west side of the Sacramento river, and immediately west from the three peaks, or, rather, due west from the highest peak of the three.

95 Ques. 6. What are the Indians called who lived at the Colus rancheria.

Ans. 6. They call themselves Colus Indians.

Cross-ex'd.

Ques. 7. In your second answer you say: I would fix the southern boundary at or adjoining Knight's Landing: do you know that from the other objects marked there, or from the nature of the country?

Ans. 7. I would know that by other marks on the exhibit, together from the nature of the country. There should have been a stream laid down—Cache creek—running through Hardy and Gordon's ranch.

Ques. 8. If the other marks on this map are incorrect, then it would alter the position of the southern boundary, would it not?

Ans. 8. I consider the marks a little incorrect, but they would have to vary a great deal.

96 Ques. 9. If the exhibit before spoken of by you had no writing nor words upon it, and no person had told you what it was, would you know what it was intended to represent.

Ans. 9. If Cache creek had been laid down I could, but without Cache creek I could not.

Ques. 10. In your 5th answer do you speak with reference to the diseño in this case, or from the nature of the country?

Ans. 10. I judge from both the map and my knowledge of the country.

Ques. 11. Do you know whether the diseño in this case is correct or incorrect?

Ans. 11. I think it is generally; some of the details may not be.

Ques. 12. Have you any interest in this case?

Ans. 12. I have a son who purchased 80 acres from Col

97 Semple, and a son-in-law whom Col. Semple is now suing in ejectment.

Ques. 13. How long have you lived in that vicinity?

Ans. 13. Within a mile of Colusi for 5 years.

Examination closed.

STEPHEN COOPER.

Sworn before me this 29 Sept., A. D. 1859.

W. H. CHEVERS,
U. S. Com.

Endorsed: Filed Oct. 13, 1859.

W. H. CHEVERS, *Clerk.*

Dep. of S. R. Smith, for claim't.

United States district court, northern district of California.

THE UNITED STATES }
vs. }
CHAS. D. SEMPLE. }

SAN FRANCISCO, *Sept.* 29, 1859.

On this day, before me, W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized
98 to administer oaths, &c , &c., came Samuel R. Smith, a witness produced on behalf of the claimant in case No. 28, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 144 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: C. D. Semple, in propria persona, and Tully R. Wise, acting U. S. att'y.

Questions by Mr. Semple.

Ques. 1. Please state your name, age, and place of residence.

Ans. 1. Samuel R. Smith; of lawful age; residence at Knight's Landing, Yolo co., Cal.

Ques. 2. State how long you have resided there, and your means of knowledge respecting the surrounding country.

Ans. 2. I have resided in the vicinity since Aug., 1849.
99 My means of knowledge are derived from riding over the country, and seeing some surveys made by U. S. deputy surveyors.

Ques. 3. Look at the original diseño on file in the case of the U. S. *v.* Thomas O. Larkin, No. 23, a traced copy of which is annexed, marked Exhibit No. 1, and state whether, from your knowledge of the objects noted on said diseño, you can name the position of the southern boundary on said diseño, and what it is now called?

Ans. 3. The estero forming the southern boundary on said diseño is now called Sycamore slough, which empties into the Sacramento river at Knight's Landing.

Ques. 4. How do you know this?

Ans. 4. Because I know the location of Mr. Gordon's, on Cache

creek, and the Hardy grant, which adjoins Gordon's on the east, and, knowing the distance from Hardy's north line to the mouth of the slough by the public survey made in 1852, by which the
100 distance was ascertained as $3\frac{1}{3}$ miles, or thereabouts.

Ques. 5. How far from Sycamore slough is it to the next slough above, on the west side of the river?

Ans. 5. We have always called it about 18 miles. This is the common opinion of the country. It is called Wilkins's slough now.

Ques. 6. State the appearance of the country forming the estero marked on Exhibit No. 1.

Ans. 6. The appearance of the country from the old northern or Oregon road in the spring and summer season—say until August—has the appearance of a lake from that road, laying in between the road and the Sacramento river, immediately above Knight's Landing, at the mouth of Sycamore slough.

Ques. 7. Was this the trail usually travelled up the Sacramento valley?

Ans. 7. Yes.

101 Ques. 8. How far did this appearance of a lake extend, and in what direction from Knight's Landing?

Ans. 8. It commenced at a point (almost in the form of a V) half a mile up the Sycamore slough, and extends in a westerly course up towards the foot of the low hills, and extended up from the mouth of the slough some 15 miles.

Ques. 9. I allude to the appearance of the lake, open water; how far did that extend?

Ans. 9. That open water, clear of the tule, would not extend over three miles.

Ques. 10. How far does the channel of the slough extend?

Ans. 10. It extends about 15 miles from the mouth, and loses itself in the heavy tule.

Cross-ex'd by Mr. Wise.

Ques. 11. How do you know that the surveyors spoken of in your 2d answer were U. S. deputy surveyors?

102 Ans. 11. My knowledge was obtained from themselves, and from seeing them put down the township corners.

Ques. 12. Do you know that the estero spoken of in your third answer is the southern boundary without reference to Exhibit No. 1?

Ans. 12. I cannot say that it is the southern boundary of that ranch, not knowing the boundaries of it.

Ques. 13. Do you know that Sycamore slough, which empties into the Sacramento river at Knight's Landing, is the same one that is shown on Exhibit No. 1?

Ques. 13. I do.

Ques. 14. How do you know it?

Ans. 14. By the way it is bounded, and by the course of the Sacramento at that point, and the location of the country around.

Ques. 15. Do you know this from Exhibit No. 1, or from the

103 nature of the country; and do you know whether Exhibit No. 1 is a correct representation of that part of the country?

Ans. 15. I should say that Exhibit No. 1 is as correct as any rough sketch is generally taken without the points, and from the general lay of the country. I know from the exhibit that it is Sycamore slough.

Ques. 16. Had the diseño, of which Exhibit No. 1 is a copy, been shown you without having any writing or names upon it, and without any explanation from any person, could you have told what place it was intended to represent?

Ans. 16. I don't think I could.

Ques. 17. In your sixth answer you say the country had the appearance of a lake from the road for a certain portion of the year; was this appearance calculated to deceive persons so as to make them believe it was a lake?

Ans. 17. It was.

104 Ques. 18. Would not some persons know it was not a lake, viewing it from the road?

Ans. 18. No; any person would have been deceived.

Ques. 19. Would they have been deceived for the whole distance of fifteen miles along the road?

Ans. 19. They would.

Ques. 20. Have you any interest in this claim?

Ans. 20. I have not. I own no land in Cal'a.

Direct resumed.

Ques. 21. Do you mean in your 17th answer to say that there was no *real* lake at the mouth of Sycamore slough?

Ans. 21. From a half a mile above the mouth, up the slough, there was a lake or sheet of water from November until August.

105 Ques. 22. Do you desire your 17th answer to be as stated in your 21st answer.

Ans. 22. I do.

Ques. 23. What section is the mouth of the Sycamore slough in with respect to the public surveys?

Ans. 23. According to the marks of U. S. surveying, it is in township 11 north, range 2 east, section 14.

Cross ex'd resumed.

Ques. 24. How do you know that the township, range, and section, as given in your last answer, was the United States survey?

Ans. 24. From conversation with men claiming to be U. S. surveyors, and seeing the marks which they put down for township and section corners.

Examination closed.

S. R. SMITH.

Sworn to before me this 29th Sept. 1859.

W. H. CHEVERS, *U. S. Com.*

106 Endorsed: Filed Oct. 13, 1859.

W. H. CHEVERS, *Clerk.*

106 *Exhibit No. 1, annexed to dep. of S. R. Smith.*

(Here follows map, page 106.)

107 *Opinion rejecting survey approved by surveyor general.*

THE UNITED STATES }
vs.
C. D. SEMPLE. }

Objections to the survey in this case having been made, it was returned to this court in pursuance of its order, and testimony was thereupon taken in support of the exceptions, and the cause submitted for decision.

The claim was rejected by the board for want of definite boundaries. Under the testimony which was before them, it was considered by the commissioners that "the only thing which was made certain by the description was that the grant was bounded by the Sacramento river, but that there was nothing to fix the place along the river where it is located."

The board further considered that this defect was not aided by the diseño to which the grant refers.

The cause having been appealed, further testimony was taken, and it appeared to this court that the location of the land along the
108 river, with its width and length, were unmistakeably indicated by the delineation of the tract on the diseño, which is drawn with more than ordinary skill by the scale which appears on it, and by the natural objects represented upon it, particularly the hill called Los Picos, and the rancheria of the Colus Indians, from which the grant derives its name, and the site of which it was shown could readily be identified. The grant was for two leagues, and Mr. Bidwell, who made the diseño, testified that its northern boundary commenced one league above the rancheria mentioned; that its width was intended to be as represented on the diseño, one league, and that it was to be extended down the river until the quantity granted was obtained. This court accordingly confirmed the claim as described in the grant and delineated on the diseño. Under this decree a survey has been made locating the grant at a considerable distance from the Sacramento, and nowhere bounded by it, although, in the
109 opinions delivered both by this court and the board, the Sacramento river was declared to be the eastern boundary of the grant, and by the board considered as the "only thing which was made certain by the description." The land surveyed is of the extent of 2,855 acres, instead of the two leagues confirmed to the claimant, nor does any portion of it appear to be within the boundaries mentioned in the grant, or delineated on the diseño.

The reason assigned for so extraordinary a location, and for so entire a departure from the decree of this court, is, that the land described in the grant, in this case, had already been granted to Manuel Jimeno.

If this were true, it is not easy to discover whence the deputy sur-

veyor derived the power to give to the claimant what he considered perhaps an equivalent in any other place.

But it is by no means apparent that the land was included in Jimeno's grant, or, rather, should be embraced in the survey of the lands granted to him.

110 The grant to Jimeno was of 11 leagues. The tract delineated on his diseño is shown to be about 39 miles in extent. Its width, as appears from the diseño, is one league. As Jimeno's grant was restricted to the quantity of 11 leagues, it is clear that some portion of the tract embraced within his boundaries must be cut off. Either the width must be preserved, and the length along the Sacramento river diminished, or the length be preserved and the width diminished. The surveyor, relying upon some expressions in the opinion of the Supreme Court in the Jimeno case, adopted the latter alternative, but the Secretary of the Interior, it would seem, is of opinion that the width as indicated by the diseño should be preserved, and the excess cut off at one end of the tract, so as, if possible, to satisfy out of the excess the junior grant to the present claimant.

This point it would not perhaps be proper now to decide, for the Jimeno grant is not before the court nor are its owners represented.

111 It is clear, however, that the present survey is erroneous. The claimant must have his land, if at all, on the place indicated with unmistakeable certainty by his diseño. If, when the survey of the Jimeno grant is presented for approval, it should appear that by a just location it will include the lands, or any part of them, which were subsequently granted to those under whom the present claimant holds, that grant will be so located, and the rights under it can be asserted in the ordinary tribunals. For the purposes of this suit, it is enough to say that the claim should be located within the boundaries called for in the grant and delineated on the diseño.

No argument in favor of the survey returned by the surveyor was made by the district attorney, that officer seeming to acquiesce in the validity of the objections urged against it, and to consider that its true location was unmistakeably indicated by the diseño; and that if the land had been previously granted to Jimeno, and should

112 be included within the lands surveyed to him, it was a controversy with which the U. S. had no concern.

I think, therefore, that the survey approved by the surveyor general should be set aside, and that a mandate should issue to him, urging him to survey to the claimant two leagues of land on the Sacramento river, at the place and within the boundaries designated on the diseño on file; said tract so to be surveyed to be in length 2 leagues, and in width one league. The natural location of this tract, if the diseño and grant be alone regarded, would be to take the ancient rancheria of the Colus Indians as a starting point, and to run equal distances to the north and south of it until the quantity of two leagues be obtained.

But inasmuch as the diseño includes more than two leagues within

the boundaries delineated on it, and as the land granted to Jimeno lies immediately to the south, it will be the duty of the surveyor so to locate the land in the present case as to leave as much
113 land as is possible to the south, that both grants may be satisfied. But the rancheria of Colus must in any case be taken as the point of beginning, and the survey be made to the north and south of it at the election of the grantee or his assigns, subject to the executive regulations of the U. S. government, and in such a way as, if possible, to allow a survey hereafter to be made of the lands granted to Jimeno without interfering with the lands herein directed to be surveyed.

Endorsed: Filed Oct. 17, 1859.

W. H. CHEVERS, *Clerk.*

114 At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 17th day of October, in the year of our Lord one thousand eight hundred and fifty-nine—

Present: The honorable Ogden Hoffman, district judge.

Order rejecting survey and directing resurvey.

CHARLES D. SEMPLE *vs.* THE UNITED STATES. } L. C., No. 144.—D. C., No. 28.

This cause came on this day further to be heard in regard to the location of the land heretofore confirmed by decree of this court, to wit, on the fifth day of July, 1855, to the said Charles D. Semple, and was argued by counsel; and thereupon, in consideration thereof, it is ordered, adjudged, and decreed as follows, to wit: that the survey and location of the said land, as made and approved by the surveyor general of the United States for the State of California,
115 a plat whereof was returned and filed in the clerk's office of the said court, under an order issued to that effect, is erroneous, and that the same be, and is hereby, disapproved. annulled, and set aside.

And it is further ordered, adjudged, and decreed, that the said surveyor general do proceed to survey the land so confirmed as aforesaid within the limits of the tract indicated on the diseño referred to in the original grant and the decree of confirmation, measuring two leagues on the Sacramento river, with an average depth of one league, so as to contain two square leagues of land.

In said measurement and location the rancheria of the Colus Indians, as marked on the said diseño, must be taken as a point of beginning, and the survey be made to the north and south of it, at the election of the grantee or his assigns, subject to the executive regulations of the United States government, and in such a way as, if possible,
116 to allow a survey hereafter to be made of the land granted to

Manuel Jimeno, without interfering with the land herein directed to be surveyed; and it is further ordered that a certified copy of this order be served on the surveyor general of California.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed Oct. 22, 1859.

W. H. CHEVERS, *Clerk.*

Affidavit of L. B. Mizner for return of survey.

In the district court of the United States for the northern district of California.—In case No. 28.

THE UNITED STATES
vs.
C. D. SEMPLE.

Lansin B. Mizner, being duly sworn, deposes and says that heretofore, to wit, on the 22nd of October last this court made an
117 order directing the United States surveyor general for California to resurvey the ranch known as "Colusi" under a final decree of this court; and whereas the said surveyor general has made such resurvey, which this deponent believes is *erroneous*, and not in accordance with the said *decree* of this court—

Wherefore an order is asked directing the U. S. surveyor gen'l to return to this court said resurvey.

L. B. MIZNER.

Sworn to and subscribed this 28 Dec., 1859, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed Dec. 29, 1859.

W. H. CHEVERS, *Clerk.*

Order to return survey.

THE UNITED STATES
vs.
CHARLES D. SEMPLE. } No. 28.—L. C. 144.—"Colus."

Upon the affidavit of L. B. Mizner, that the survey made by
118 the U. S. surveyor general for Cal'a, under the order heretofore entered, directing a resurvey of the land finally confirmed herein, is eroneous, filed by Messrs. Thornton, Williams, and Thornton, attorneys for claimant, and in pursuance of the rule heretofore entered, it is ordered that the said surveyor general for Cal'a return to this office a certified copy-plat of his official surveys of the land finally confirmed in this case, made under the said order of court.

San Francisco, Dec. 29, 1859.

W. H. CHEVERS, *Clerk.*

Endorsed: Served personally, by copy, on James W. Mandeville, U. S. surveyor general for California, in the city of San Francisco, this December 29, 1859.

P. L. SOLOMON,
U. S. Marshal,
By S. LAMKIN, *Deputy.*

Filed Dec. 29, 1859.

W. H. CHEVERS, *Clerk.*

(Here follow two plats, page 118.)

No.	Courses.	Chains.	No.	Courses.	Chains.
1	West.	172.44	32	N. 72½ W.	10.00
2	South.	173.89	33	48	13.40
3	East.	40.00	34	40° 39′	10.36
4	South.	280.00	35	25¾	10.50
5	East.	40.00	36	9	8.60
6	N. 73¼ E.	166.40	37	5⅜ E.	15.60
7	N. 17 E.	63.74	38	14½	25.96
8	N. 85 W.	12.58	39	44½ W.	22.77
9	76¾	21.00	40	8	17.39
10	23	7.90	41	13½ E.	6.00
11	50¾	8.10	42	28½	9.00
12	43¾	8.00	43	41¾	41.00
13	29½	4.23	44	38¼ W.	10.41
14	72½	6.80	45	62½	14.40
15	48	8.22	46	81	8.43
16	14	12.00	47	84	18.30
17	19¾ E.	5.80	48	S. 44½	9.70
18	56½	11.50	49	23¼	7.00
19	87¾	23.91	50	37	4.97
20	68½	2.60	51	50¼	2.20
21	35	3.70	52	64	5.22
22	42	11.86	53	86⅜	6.00
23	71¾	16.00	54	N. 77¾	8.00
24	55	2.60	55	62	4.40
25	0¾	4.13	56	24¼	7.00
26	28¾ W.	11.00	57	17½	6.00
27	17½	10.76	58	5½ E.	10.12
28	5 E.	8.00	59	9¾	5.40
29	33	17.70	60	18¾	7.00
30	54½	21.86	61	30¾	14.00
31	85½ W.	20.62	62	14¾	1.92

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, Jan'y 17, 1860.

I certify this to be a full, true, and correct copy of the original plat on file in this office of an official survey of the "Colus rancho," finally confirmed to C. D. Semple.

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed this seventeenth day of January, one thousand eight hundred and sixty.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor General.

Approved Jan'y 31, 1861.

OGDEN HOFFMAN, *Dis't Judge.*

Boundaries.

No.	Courses.	Distance.	No.	Courses.	Distance.
1	S. 23° E.	7.90	33	S. 60¾° E.	46.00
2	76¾	21.00	34	36	18.50
3	85	12.58	35	50¾ W.	3.55
4	65½	10.50	36	74¾	9.20
5	73½	15.09	37	61½	7.25
6	75½	6.82	38	50½	9.60
7	35¼	14.56	39	41¾	12.25
8	51½	14.00	40	29½	15.00
9	62¾	16.85	41	32	5.00
10	49¾	5.75	42	42	4.78
11	2¼	7.50	43	5¼	7.40
12	21 W.	8.70	44	24½ E.	8.40
13	26¼	18.57	45	40½	37.70
14	21¼	14.45	46	23¾	10.30
15	11	10.50	47	15	35.00
16	0½ E.	7.15	48	15¾	7.00
17	22	9.70	49	52	221.11
18	44	10.75	50	North.	58.96
19	55¾	3.50	51	West.	40.00
20	66	10.00	52	North.	40.00
21	43¼	11.00	53	West.	40.00
22	54½	23.00	54	North.	40.00
23	60	8.50	55	West.	80.00
24	86¾	12.00	56	North.	40.00
25	80½	12.60	57	West.	31.15
26	86	9.10	58	North.	81.75
27	N. 77½	7.00	59	West.	64.08
28	62	10.00	60	North.	40.00
29	58¼	9.45	61	West.	20.00
30	48¾	19.27	62	North.	12.30
31	59¾	32.00	63	N. 52	179.15
32	45	27.00			

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, January 17th, 1860.

I certify this to be a full, true, and correct copy of the original plat on file in this office of an official survey of the "Colus rancho," finally confirmed to C. D. Semple.

In witness whereof, I have hereunto signed my name and caused the seal of this office to be affixed this seventeenth day of January, one thousand eight hundred and sixty.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor Gen'l.

119 *Order denying motion to vacate order of* 29 *Dec.*, 1859, *etc.*, *etc.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Wednesday, the 22nd day of August, in the year of our Lord one thousand eight hundred and sixty—

Present: The honorable Ogden Hoffman, district judge.

C. D. SEMPLE
vs.
THE UNITED STATES.

On this day came the claimant, by his attorney, and moved the court to vacate the order of 29th day of December, 1859, requiring the surveyor general of the U. States to return the survey of the "Colus rancho" into this court; and thereupon it was ordered by the court that said motion be, and the same is hereby, overruled and denied. And it is further ordered that the said survey be retained for the judgment of this court, and that claimants have leave to move
for the approval of the survey last made and approved by
120 said surveyor general upon three days' notice to the district attorney and to A. C. Whitcomb, counsel for the claimant in the conflicting claim of the United States *vs.* T. O. Larkin *et. al.*

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed August 22, 1860.

W. H. CHEVERS, *Clerk.*

Notice of motion to confirm survey.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
CHARLES D. SEMPLE. } Claim No. 28 for "Colus" rancho.

SAN FRANCISCO, 22*d August*, 1860.

SIRS: Please take notice that on Monday, the 27th day of
121 August instant, at 11 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, we will move the above named court to approve the survey of said rancho, made in obedience to a decree of said court, rendered on the 17th day of October, 1859, which said survey contains 8,876.$\frac{2}{100}$ acres, and was returned into the said court by the United States surveyor general for California on the 17th day of January, 1860.

Yours, &c.,

THORNTON, WILLIAMS & THORNTON.
Att'ys for Claimant.

To CALHOUN BENHAM, Esq.,
U. S. Dis't Att'y.
A. C. WHITCOMB, Esq'r.

Due service acknowledged.

BENHAM,
U. S. Att'y.

SAN FRANCISCO, *Aug.* 22, 1860.

Received a copy of the within this day.

A. C. WHITCOMB.

Filed August 25, 1860.

W. H. CHEVERS, *Clerk.*

122 *Opinion on survey.*

UNITED STATES *vs.* C. D. SEMPLE. } No. 28.

The counsel for the claimant in this case moves for an order approving a survey made by the surveyor in pursuance of an order heretofore entered rejecting the original survey and giving directions for a new and reformed survey to be made.

Before proceeding to inquire whether the last survey is in conformity with the directions heretofore given, a preliminary question must be determined. By the recent act of Congress, (June 14, 1860,) "all cases in which proceedings are pending for the purpose of contesting or reforming surveys made and approved by the surveyor general are made subject to the provisions of the act." If, then, in this case such proceedings are pending, the provisions of the act must be applied to it. To determine whether proceedings are pending within the meaning of the act, the nature of the order
123 or decree heretofore made must be considered. If that decree be a final decree, the can no longer be said to be pending, and vice versa.

It is obvious that in a large majority of cases no decree by which one survey is rejected and another directed to be made can be deemed a final decree. The directions contained in such a decree must usually be general, and rather determine the principles on which the new survey is to be made than fix the precise location of the lines.

In carrying into effect such directions, new questions, not discussed or considered, may arise, for the previous discussions will naturally have turned rather on the correctness of the original survey than on the precise location of the new lines directed to be run.

In all such cases it is clear that no decree can be deemed final which has not adopted and approved some survey and plat fixing with precision every line of the land. It is argued that only one decree is spoken of in the act, viz: the decree determining the true
124 location of the land, and that the order approving such location, when afterwards made, is merely a decretal order entered after final decree.

But, from what has been said, it is apparent that in many cases most important questions may arise, upon which testimony must be taken and argument heard before the court can finally determine to approve and adopt the survey made under its first order. While such questions remain open and undetermined, the decree cannot be said to be final. It may be true, therefor, that the act speaks of

only one decree; but if so, it is the decree by which some survey previously made is adopted and approved; not the interlocutory order by which a survey is rejected and directions for the making of another survey given. The language of the act confirms this view. The fifth section provides that "the said *plat and survey*, so finally determined by publication, order, or *decree*, as the case may
125 be, shall have the same effect and validity in law as if a patent for the land so surveyed had been issued by the U. S."

It is obvious that the effect and validity of a patent is here attributed not to the decree which determines how the survey should be made, but "*to the plot and survey finally determined* by decree or otherwise"—clearly showing that a plot and survey must be before the court, and finally passed upon by it, before the provisions of the act can apply.

That a decree adopting and approving some survey before the court was, previously to the passage of the act, alone considered by the Supreme Court as a final decree, is evident from the case of United States *vs.* Fossatt. In that case this court had given directions in its decree for the location of the land, and had determined every question relative to the location, referred to it by the Supreme Court or raised by the parties.

But the Supreme Court refused to entertain the appeal because no survey had been made and adopted by the court.

126 The act of 1860 was not intended to repeal the existing law on this subject, but to define and regulate the jurisdiction already possessed by this court.

The decision of the Supreme Court is, therefore, an express authority as to the nature and essential elements of a final decree of this court on the location of a land claim.

It is objected that the publication as required by the 3d section cannot be made in this case, and, therefore, that that provision does not apply. This is admitted; for it is obviously too late to make a publication "before any testimony shall be taken, as that section requires."

But the important provisions of the act relative to the admission of parties to the suit, the effect of the decree of this court, and the time within which an appeal may be taken, are still susceptible of easy application to this case, and must be deemed to apply to it if it be a pending case—unless the provision of the 6th section,
127 by which pending cases are made subject to the provisions of the act, are wholly nugatory.

An advertisement for all parties to intervene can, therefore, be made in analogy to the advertisement required to be made in cases initiated under the act, and, mutates mutandis, to suit the difference between the cases.

Again, if this be not a pending case, none of the provisions of the act of 1860 can apply to it. The right of appeal must then exist, if at all, under the provisions of the act of 1851. But the appeal heretofore taken from the decree of this court, confirming the claim, has been dismissed by consent. It may thus admit of doubt whether

any appeal from the order or decree of this court, determining how the location shall be made, can be taken; for this cause has not been like the cases decided by the Supreme Court, remanded to this court for further proceedings. If, however, an appeal will lie, it may be taken at any time during five years.

The practical effect, therefore, of withdrawing this cause
128 from the operation of the act of 1860 is so inconvenient that it affords an argument against adopting any view of the case which would invole such a result.

The cause is, in other respects, peculiarly within the class with regard to which Congress intended to make new provisions and afford new remedies. In passing the act of 1860, Congress had in view three great objects:

1st. To fix and define the jurisdiction of this court over surveys by authorizing it, within a period strictly limited, to order them before it.

2nd. To permit all persons, whose interests were involved, to intervene in the proceeding.

3rd. To limit the time within which appeals were to be taken.

These important remedial provisions were, by the act, extended to all cases pending in this court.

In the case at bar it appears that the land, as located by this
129 court, is wholly embraced within the survey and location of an adjoining rancho. The survey of that rancho has been ordered into court, and is now a pending case.

The claimant in the present case will have the right, which he will no doubt exercise, to intervene in that proceeding. But his adversary has not had, nor, if this case be held not to be a pending case, will he ever have, an opportunity to intervene in this cause for the protection of his interest.

The court might thus in this cause, where only one side has been heard, arrive at a conclusion wholly irreconcilable with that which it would reach in the subsequent case, where all parties would be heard, and testimony on both sides be taken.

It thus appears that this case is one to which the provisions of the act of 1860 should, if it be possible, be applied.

As the act of 1860 prescribes a short period within which appeals may be taken, it is important that no doubt should exist as to the time when the final decree of this court is entered; for from
130 the date of its entry, the six months within which the appeal may be taken, begins to run.

If the decree, by which a plot and survey actually before the court is adopted and approved, be considered the final decree, a clear and uniform rule is prescribed, admitting of no misapprehension. But if the decree determining the mode in which the survey is to be made be considered final or interlocutory, according as the directions contained in it are more or less precise, the date from which the six months are to begin to run will be left open to doubt and dispute.

Various other considerations might be suggested. Enough has been said to show that, on principle as well as on grounds of conve-

nience, no decree of this court, with respect to the location of a land claim, should be held to be a final decree which does not approve and adopt a plot and survey previously made, and actually before it.

All cases, therefore, in which no such decree has been made
131 are to be regarded as pending cases, and subject to the provisions of the act of 1850.

The motion for a decree approving the survey made under the previous decree of this court in this case is denied, and the cause must be proceeded in subject to the provisions of the act of 1860. A special order will be entered directing a proper monition to issue, admonishing all parties to intervene for their interest, and the cause must be further prosecuted in conformity with the rules adopted by the court in this class of cases.

Endorsed: Filed Aug. 31, 1860.

W. H. CHEVERS, *Clerk.*

132 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Saturday, the first day of September, in the year of our Lord one thousand eight hundred and sixty—

Present: the honorable Ogden Hoffman, district judge.

Order denying motion to approve survey and directing issue of monition.

C. D. SEMPLE
vs.
UNITED STATES. } No. 28.

The motion heretofore made in this case, upon part of claimant, for approval by the court of the modified survey made by the surveyor general of the U. States of the rancho Colus, was this day argued; thereupon, and in consideration thereof, it is ordered, adjudged and decreed that said motion be, and the same is hereby, overruled; and it is further ordered that a monition in the usual form, under the rule of this court, be forthwith issued and published, returnable on the 19th day of this month.

133 Endorsed: Filed September 1, 1860.

W. H. CHEVERS, *Clerk.*

Monition.

UNITED STATES OF AMERICA,
Northern District of California, ss:

[SEAL.] *The President of the United States of America to the marshal of the United States for the northern district of California, greeting:*

Whereas objection has been made to the official survey and location of the land finally confirmed, in case No. 28, to Charles D. Sem-

ple, known as "Colus," and situated in the county of Colusa, in said district:

Now, therefore, you are hereby commanded. in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have. an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or
134 before Wednesday, the 19th day of September, A. D. 1860, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ, do you then and there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 4th day of September, A. D. 1860.

W. H. CHEVERS, *Clerk.*

Endorsed: The within monition was received by me on Tuesday, the 4th day of September, 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice for two consecutive Wednesdays in the San Francisco Herald, commencing on the fifth day of September, 1860; and for two consecutive Saturdays in the Marysville Express, a paper
135 published nearest the land, commencing on the 8th day of Sept'r, 1860. Dated San Francisco, Sept'r 19th, 1860.

P. L. SOLOMON, *U. S. Marshal.*

Returnable Sept. 19, 1860. Issued Sept. 4, 1860. Filed Sept. 19, 1860.

W. H. CHEVERS, *Clerk.*

Order on return of monition.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday the 19th day of September, in the year of our Lord one thousand eight hundred and sixty. Present: The honorable Ogden Hoffman, *district judge.*

THE UNITED STATES *v.* CHARLES D. SEMPLE. } In land cases, district court, No. 28.—Land com. No. 144.

136 And now, at this day, the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice as therein commanded on motion of A. C. Whitcomb, attorney for Larkin and Missroon, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above-entitled cause, appear and intervene for the protection of such interest. The U. S.

attorney appeared in behalf of the U. S., and John J. Williams in behalf of the claimant; A. C. Whitcomb appeared in behalf of George Hager. And, on motion, it is hereby ordered by the court that he be allowed to intervene in behalf of the said Hager; and no other parties appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed Sept. 19, 1860.

W. H. CHEVERS, *Clerk.*

137 *Exceptions of U. S. to survey.*

U. S. district court.

THE UNITED STATES } No. 28.—L. C. 144.—"Colus."
v.
CHARLES D. SEMPLE. }

And now comes Calhoun Benham, U. S. att'y, and excepts to the official survey of the land finally confirmed in this case, shown by the plat filed in this court Jan'y 17, 1860, approved same day by surveyor general for California, and purporting to contain $8,876\frac{2}{100}$ acres. And the U. S. aver that said survey is not in accordance with the final decree, grant, and diseño, in this: that the place of beginning should have been ascertained by running a straight line one league and three-quarters in length from the large bend in the Sacramento river, opposite the buttes, (that is, from post L M 110, as shown on plat purporting to contain 8,896 acres, also filed Jan'y 17, 1860,) in a northwesterly direction, to the west bank of the Sacramento river, the extremity of which line should have
138 been the point of beginning; thence at right angles with said river at that point, southwesterly, one league; thence southeasterly on subdivision lines, as near as may be, one league from the river Sacramento, with its meanderings, two leagues in a direct line—that is, the northwest corner should have been two leagues distant, in a straight line, from the southwest corner, while the line itself should have approximated, so far as the subdivision lines would allow, with the meanderings of the river; thence from said southwest corner to the Sacramento river, so as to include the exact quantity of two Spanish leagues; whereas the said survey, as shown by said plat of $8,876\frac{2}{100}$ acres, commences at post C R 1, as shown on said last-named plat, and embraces but a very small portion of the land shown on the diseño, to wit, that portion on a part of which is located the town of Colusa.

Wherefore the U. S. pray that the survey shown by plat of $8,876\frac{2}{100}$ acres be rejected, and the surveyor general be di-
139 rected to reform the plat of 8,896 acres so as to conform to

the location hereinbefore set forth, if, upon examination, it does not appear to conform thereto already.

Dated San Francisco, Sept. 29, 1860.

CALHOUN BENHAM, *U. S. Att'y.*

Endorsed: Filed Sep. 29, 1860.

W. H. CHEVERS, *Clerk.*

Order to close proofs, &c.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 28th day of November, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
CHARLES D. SEMPLE. } No. 28.

140 This cause coming on to be heard on the motion of counsel for claimant to fix a day for closing the proofs herein, and to set a day for the hearing of the said cause, and having been argued by Mr. Williams, for the claimant, and by Mr. Pringle, opposed, and due deliberation being had in the premises, it is now ordered by the court that the proofs be closed on or before the 20th December next, and that on that day either party may move the court to set a day for the hearing of this cause on the regular notice of three days.

Endorsed: Filed November 28, 1860.

W. H. CHEVERS, *Clerk.*

(Here follows map, page 140.)

140¼ *Boundaries.*

No.	Course.	Chains.	No.	Course.	Chains.
1	West.	172.44	32	N. 72½° W.	10.40
2	South.	173.89	33	48	13.40
3	East.	40.00	34	40° 39′	10.36
4	South.	280.00	35	25¾°	10.50
5	East.	40.00	36	9	8.60
6	N. 73¼° E.	166.40	37	5¾ E	15.60
7	17 E.	63.74	38	14½	25.96
8	85 W.	12.58	39	44½ W.	22.77
9	76¾	21.00	40	8	17.39
10	23	7.90	41	13½ E.	6.00
11	50¾	8.10	42	28¾	9.00
12	43¾	8.00	43	41¾	41.00
13	29½	4.23	44	38¼ W.	10.41
14	72½	6.80	45	62½	14.40
15	48	8.22	46	81	8.43
16	14	12.00	47	84	18.30
17	19¾ E.	5.80	48	S. 44½	9.70
18	56½	11.50	49	23¼	7.00
19	87¾	23.91	50	37	4.97
20	68½	2.60	51	50¼	2.20
21	35	3.70	52	64	5.22
22	42	11.86	53	86¾	6.00
23	71¾	16.00	54	N. 77¾	8.00
24	55	2.60	55	62	4.40
25	0¾	4.13	56	24¼	7.00
26	28¾ W.	11.00	57	17½	6.00
27	17½	10.76	58	5½ E.	10.12
28	5 E.	8.00	59	9¾ E.	5.40
29	33	17.70	60	18½	7.00
30	54¼	21.86	61	30¾	14.00
31	85½ W.	20.62	62	14¾	1.92
		1,197.34			341.45
					1,197.34
	Aggregate				1,538.79

Mls. chs. lks.
= 19 18 79

The field-notes of the "Colus rancho," and from which this plat has been made out, have been examined and approved, and are on file in this office.

(Signed) J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cal'a.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, March 19th, 1860.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original plat, on file in this office, of the official survey of the "Colus rancho," finally confirmed to C. D. Semple, by decree of 17th October, 1859.

In witness whereof, I have hereunto signed my name and
[S. F.] caused the seal of this office to be affixed this 16th day of August, 1860.

J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cal'a.

Decree confirming survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the third day of December, in the year of our Lord one thousand eight hundred and sixty.

141 Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* CHARLES D. SEMPLE. } D. C. No. 28.—L. C. No. 144.—"Rancho de Colus."

This cause coming on to be heard upon the exceptions to the survey of the land heretofore confirmed, known by the name of "Colus," duly approved, and the plat thereof returned to and filed in this court, on the seventeenth day of January, one thousand eight hundred and sixty, by the surveyor general of the United States for the State of California, pursuant to the decree and order of the court, made herein on the seventeenth day of October, one thousand eight hundred and fifty-nine; and having been argued by counsel for the respective parties, and duly submitted by them to the court for consideration and decision, and due deliberation being had in the premises—

Now, therefore, it is ordered, adjudged, and decreed that
142 the said exceptions be, and the same are hereby, overruled.

And it is further ordered, adjudged, and decreed, that the said survey, containing eight thousand eight hundred and seventy-six acres and two one-hundredths of an acre, of the said land claimed and confirmed in this cause, called "Colus," the plat whereof was by the said surveyor general approved, and on the said seventeenth day of January, one thousand eight hundred and sixty, returned to and filed in this court, be, and the same is hereby, approved, confirmed, and adopted by this court as the true, proper, and correct survey of the said land confirmed in this cause, called "Colus," as aforesaid; and that, in accordance with the said survey and plat thereof, the following described boundaries be, and they are and shall forever remain, the exterior boundaries of the said land so confirmed and called as aforesaid, to wit: Beginning at a post, marked C. R.
No. 1, on the right bank of the Sacramento river, from which
143 a post, marked L. M., bears north $14\frac{3}{4}^{\circ}$ east, one chain 92 links; thence west 172 chains 44 links, to a post marked C. R. No. 2; thence south 173 chains 89 links, to a post marked C. R. No. 3; thence east 40 chains, to a post marked C. R. No. 4; thence south 280 chains, to a post marked C. R. No. 5; thence east 40 chains,

to a post marked C. R. No. 6; thence north 73¼° east, 166 chains 40 links, to a post marked C. R. No. 7, at the southeast corner of the town of Colusa; thence, along the town line, north 17° east, 63 chains 74 links, to a post marked C. R. No. 8, on the right bank of the said Sacramento river; thence up and along the right bank of said river, with the meanders thereof, according to the courses and distances mentioned on the official plat, this day approved by this court, to the place of beginning.

It is further ordered that a copy of this decree, duly certified by the clerk of the court, be served upon the surveyor general.

OGDEN HOFFMAN,

144 *U. S. Dist. Judge.*

San Francisco, *February* 2, 1861.

Endorsed: Filed Febr'y 2, 1861.

W. H. CHEVERS, *Clerk.*

Order granting appeal in behalf of the U. S.

At a stated term of the district court of the United States of America for the northern district of California, held at court-room in the city of San Francisco, on Friday, the 12th day of April, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

The United States
vs.
Charles D. Semple. } D. C. No. 28.—L. C. No. 144.

This cause having come on to be heard on objections filed
145 to the survey and location by the surveyor general of the U. S. for California of the lands heretofore confirmed to the claimant, pursuant to the provisions of the act of Congress approved June 14, 1860; and the said survey and location having been disapproved by the court and a new survey ordered, which has accordingly been made, and, by the final decree of this court, made and entered on he second day of February, A. D. 1861, approved and adopted, now, on motion of Calhoun Benham, esq., U. S. att'y, made in open court, it is ordered by the court that an appeal in behalf of the United States from said final decision be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed April 12, 1861.

W. H. CHEVERS, *Clerk.*

146 I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing one hundred and forty-five consecutively numbered pages, together with the plats also annexed,

exhibit a full, true, and correct transcript of the record of the proceedings before the board of U. S. land commissioners, in case No. 144, Charles D. Semple *v.* The United States, and of the record of proceedings before said district court on appeal from the decision of said board, in case No. 28, The United States *v.* Charles D. Semple, claiming the rancho "Colus," as the same appear on file in my office in said cause.

In testimony whereof, I have hereto set my hand and [SEAL.] affixed the seal of said court this 22d day of July, A. D. 1862, and of our independence the 87th.

W. H. CHEVERS, *Clerk*.

Filed December 9, 1862.